



# **Microcard Editions**

An Indian Head Company

A Division of Information Handling Services

# **CARD 1**

# TRANSCRIPT OF RECORD.

---

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, ~~1913~~ 1914

No. ~~215~~ 216

---

GEORGE G. HENRY, APPELLANT,

vs.

WILLIAM HENKEL, UNITED STATES MARSHAL FOR THE  
SOUTHERN DISTRICT OF NEW YORK.

---

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
THE SOUTHERN DISTRICT OF NEW YORK.

---

FILED JULY 11, 1913.

(23,790)



(23,790)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 639.

GEORGE G. HENRY, APPELLANT,

vs.

WILLIAM HENKEL, UNITED STATES MARSHAL FOR THE  
SOUTHERN DISTRICT OF NEW YORK.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
THE SOUTHERN DISTRICT OF NEW YORK.

INDEX.

	Original.	Print
Petition for writ of <i>habeas corpus</i> .....	1	1
Exhibit A—Order of Commissioner Shields. ....	10	5
B—Complaint.....	11	6
C—Indictment.....	19	10
D—Bench warrant.....	40	24
E—Warrant to apprehend .....	42	25
F—Evidence before the Money Trust Investigating Committee.....	45	26
Testimony of George G. Henry .....	46	27
Exhibit No. 149—Letter of Doheny and Canfield to Salomon & Co., September 16, 1912.....	61	33
No. 150—Letter of Salomon & Co. to Do- heny and Canfield, September 19, 1912.....	64	34
No. 151—Letter of Salomon & Co. to Do- heny and Canfield, September 25, 1912 .....	65	34

	Original. Print	
Exhibit No. 152—Letter to board of directors of California Petroleum Corporation, September, 1902 .....	66	35
No. 153—Schedule "A" .....	72	37
Schedule "B" .....	77	39
Testimony of Geo. G. Henry (continued) .....	80	40
Exhibit No. 160—Letter of September 21, 1912....	155	71
No. 161—Letter of September 24, 1912....	158	72
No. 162—Letter of October 21, 1912 .....	159	72
Exhibit G—Report of the committee appointed, pursuant to House resolutions 429 and 504, to investigate the concentration of control of money and credit, H. of R. No. 1593, 62d Congress, 3d session.....	160	73
Writ of <i>habeas corpus</i> .....	419	333
Notice of motion for warrant of removal .....	421	333
Notice of motion to quash writ of <i>habeas corpus</i> .....	423	334
Return to writ of <i>habeas corpus</i> .....	425	335
Traverse .....	429	336
Order discharging writ of <i>habeas corpus</i> .....	432	337
Opinion .....	435	338
Petition for appeal and order allowing same .....	443	341
Assignment of errors .....	447	343
Citation and service .....	453	346
Præcipe for record .....	456	347
Stipulation as to record .....	459	348
Clerk's certificate .....	460	348

1 In the District Court of the United States for the Southern District of New York.

GEORGE G. HENRY, Petitioner,

vs.

WILLIAM HENKEL, United States Marshal for the Southern District of New York.

In the Matter of GEORGE G. HENRY for a Writ of Habeas Corpus.

To the District Court of the United States for the Southern District of New York, in the Second Judicial Circuit:

The petition of the above named George G. Henry respectfully shows:

I. That your petitioner is a citizen of the United States, a citizen and inhabitant of the State of New Jersey, and a member of the firm of William Salomon and Company, private bankers doing business in the Borough of Manhattan of the City of New York, in this Circuit and district.

II. That your petitioner is now actually imprisoned and restrained of his liberty, and detained by color of the authority of the United States, in the custody of William Henkel, Esquire, United States Marshal in and for the Southern District of New York, to-wit, at the Borough of Manhattan in said district.

III. That the sole claim or authority by virtue of which the said William Henkel, Marshal as aforesaid, so restrains and detains  
2 your petitioner is a certain commitment in writing, a copy of which is hereto annexed, marked "A"; and that your petitioner is not detained by virtue of any judgment, decree or final order of any court.

IV. That on the 14th day of February, 1913, at the Borough and District aforesaid, a complaint in writing, purporting to be signed and sworn to by John E. Walker, an assistant United States Attorney for the said District, a copy of which is hereto annexed marked "B", was presented to John A. Shields, Esquire, United States Commissioner for the said District, and that annexed to the said complaint and making a part thereof were an exemplified copy of an indictment returned against your petitioner by the Grand Jury for the United States for the District of Columbia in the Supreme Court for that District on the 10th day of February, 1913, and a bench warrant issued thereon, copies of which are hereto annexed marked "C" and "D", respectively.

V. That thereafter, and on the said 14th day of February, 1913, a warrant for your petitioner's arrest was issued by the said John A. Shields, Esquire, Commissioner as aforesaid, upon the aforesaid complaint, and the papers thereto annexed, as above set forth, and upon no other papers or evidence, which said warrant was placed for execution in the hands of the said William Henkel, Marshal as afore-

said, who, on the same day, in obedience thereto, arrested your petitioner and brought him before the said John A. Shields, Esquire, Commissioner as aforesaid, and made return of the said warrant, endorsed thereon, and that a copy of the said warrant, together with the said endorsement, is hereto annexed, marked "E"; that

3 thereupon your petitioner applied to the said John A. Shields, Esquire, Commissioner as aforesaid, for an examination of the said complaint and into the cause of his restraint, which was accorded him, and that such examination was begun before the said John A. Shields, Esquire, Commissioner as aforesaid, on the 27th day of February, 1913, and was concluded on the 7th day of March, 1913, your petitioner being meanwhile admitted to bail to appear upon and abide by the result of such examination.

VI. That upon the said examination, and before the introduction of any evidence, counsel for your petitioner moved for a dismissal of the complaint and for your petitioner's discharge on the ground that the said commissioner was without jurisdiction to proceed in the premises, it appearing on the face of the complaint that your petitioner was not thereby charged with any crime or offense against the United States; and that this motion was denied.

VII. That thereupon the United States attorney introduced in evidence the exemplified copy of the indictment above mentioned, and the said bench warrant; that your petitioner conceded that he was the person therein named and described as George G. Henry; and that the Government offered no other or further proof before the said Commissioner in support of the complaint, or of any of its averments.

VIII. That counsel for your petitioner thereupon again moved for a dismissal of the complaint, and for your petitioner's discharge, on the ground that the said indictment charged no crime or offense against the laws of the United States, and that the evidence given by the Government upon the said examination had failed to show any such offence, and that the said Commissioner was therefore

4 without jurisdiction in the premises; and that this motion was also denied.

IX. That counsel for your petitioner then introduced in evidence before the said Commissioner a transcript of the stenographic minutes of the entire testimony which had been given by your petitioner in and upon his examination as a witness before the Sub-Committee of the Committee on Banking and Currency of the House of Representatives at and upon the inquiry and investigation mentioned in the said indictment, a copy of which said transcript is hereto annexed marked "F"; and a certified copy of the report of the said Sub-Committee, which was submitted to the House of Representatives on the 28th day of February, 1913, a copy of which is hereto annexed marked "G;" that no other or further proof was offered before the said Commissioner on behalf of your petitioner, and that, except as hereinabove stated, no evidence was presented to or adduced before the said Commissioner on the said examination by or on behalf of either party.

X. That at the close of the said examination, counsel for your

petitioner again moved the said Commissioner for a dismissal of the said complaint and for your petitioner's discharge on the ground that no evidence had been given upon the said examination showing probable cause to believe your petitioner to be guilty of any crime or offense against the laws of the United States, and that the said Commissioner was therefore without jurisdiction in the premises; and that this motion was also denied.

XI. That thereupon the said Commissioner issued the commitment aforesaid, by virtue and under color of the authority of which the said William Henkel so restrains and detains your petitioner as aforesaid; and that in issuing the said commitment the said  
5 Commissioner acted solely and exclusively upon the proceedings had upon the said examination, as above set forth, and upon no other or further proof or evidence whatsoever.

XII. That, as your petitioner is advised by counsel and verily believes, his imprisonment, restraint and detention are without authority of law whatsoever, and that he is now deprived of his liberty in violation of his rights, privileges and immunities under the Constitution and laws of the United States, for the following reasons:

(a) The said Commissioner was without authority, power or jurisdiction under the said Constitution and laws, by reason of any of the matters and things contained and set forth in the said complaint, or in the indictment aforesaid, or in either of them, or by reason of anything presented or adduced upon the said examination, to entertain any charge against your petitioner, or to act or proceed in any manner in the premises.

(b) At the time your petitioner attended before the said Sub-Committee of the Committee on Banking and Currency of the House of Representatives and gave his testimony before it, and at the time he refused to answer the questions which are set forth in the said indictment, the said Sub-Committee was engaged in no investigation or inquiry, and was conducting no proceeding, upon which your petitioner could be required or compelled, under the Constitution and laws of the United States, to testify or give evidence before the said Sub-Committee.

(c) The resolution of the House of Representatives of April 25, 1912, directing the investigation and inquiry in and upon  
6 which your petitioner was examined as a witness before the said Sub-Committee, marked and known as House Resolution No. 504, was passed and adopted without and in excess of any power conferred upon the House of Representatives by the Constitution of the United States.

(d) The passage and adoption of the said resolution constituted an encroachment upon the powers confided by the Constitution to the judicial branch of the government; and in conducting the investigation and inquiry thereby directed, the said Sub-Committee assumed a power which could only be properly exercised by the judicial branch of the government.

(e) The said resolution, in so far as it undertook to require upon your petitioner to testify as a witness before the said Sub-Committee in respect of the transactions, matters and things concerning which

he was interrogated by and before the said Sub-Committee, beyond what he voluntarily chose to tell, and particularly in so far as it undertook to compel your petitioner to testify before the said Committee of and concerning the names of National Banks, and officers of National Banks who had participated in the syndicate operation of the California Petroleum Company, referred to in the said indictment, and of and concerning the name of the fourth partner in the syndicate therein denominated the "Banking Group," the said fourth partner being a banking firm in New York City which your petitioner had previously testified was a member of and had an interest in the said last mentioned syndicate, and in so far as it undertook to compel your petitioner to answer any of the questions which he refused to answer upon his examination before the said Sub-Committee, was passed and adopted without and in excess of any power

vested in the House of Representatives by the constitution, and conferred upon the said Sub-Committee no power or jurisdiction to require or compel your petitioner to answer any of the said questions.

(f) The matters sought to be elicited by the questions which your petitioner so refused to answer were, and are, your petitioner's personal and private affairs, and are also the personal and private affairs of the said firm of William Salomon and Company; and they are therefore matters into which neither the House of Representatives, nor the said Sub-Committee, had, nor can have, under the constitution, any right, power, jurisdiction or authority whatsoever to make inquiry in aid of the legislative function.

(g) The said resolution, in so far as it undertook to authorize the said Sub-Committee to inquire of and concerning the name of National Banks and of and concerning the names of officers of National Banks who had participated in the said syndicate operations of the California Petroleum Company was passed and adopted in violation of Title LXII. of the Revised Statutes which provides that no national banking association shall be subject to any visitatorial powers other than such as are authorized by that Title, or are vested in the courts of justice, and was, for that further reason wholly null and void.

(h) None of the questions which your petitioner refused to answer on his examination as a witness before the said Sub-Committee was pertinent to any matter within the jurisdiction of the House of Representatives which was, at the time, before it for consideration, or proper for its examination, or to any fact bearing thereon.

(i) The said indictment charges no crime or offense against laws of the United States, and the evidence given before the said Commissioner and upon which he issued the said commitment failed to show probable cause to believe that your petitioner had been guilty of any such crime or offense.

(j) The Congress of the United States is without power, under the Constitution and laws of the United States to constitute the matters and things specified in the said indictment a crime or offense against the United States.

(k) Your petitioner's refusal to answer the questions propounded

to him during his examination and testimony as a witness before the said Sub-Committee of the Committee on Banking and Currency of the House of Representatives as set forth in the said indictment, in the manner and form as therein alleged, did not constitute a crime or offense under any law of the United States.

(7) If Sections 102, 103 and 104 of the Revised Statutes upon which the said indictment purports to be based, or any other statute of the United States, were intended to make the acts specified in the indictment herein a crime or offense against the United States, and are to be construed as accomplishing that result, the same were enacted without, and in excess of, any power conferred upon the Congress by the Constitution of the United States, and are null and of no effect.

Wherefore your petitioner prays that a writ of habeas corpus may issue directed to the said William Henkel, Marshal as aforesaid, requiring him to bring and have your petitioner before this Court forthwith, to the end that due inquiry may be had in the premises and the question of your petitioner's imprisonment, restraint and detention be disposed of as law and justice require. And your petitioner will ever pray.

Dated the 7th day of March, 1913.

GEORGE G. HENRY, *Petitioner*.

CRAVATH & HENDERSON,

*Attorneys for the Petitioner.*

Office and Post Office Address, No. 52 William Street, Borough of Manhattan, City of New York.

UNITED STATES OF AMERICA,

*Southern District of New York, ss:*

George G. Henry, being duly sworn deposes and says that he has read the foregoing petition and knows the contents thereof, and that the same is in all respects true.

GEORGE G. HENRY.

Subscribed and sworn to before me this 7th day of March, 1913.

[COMMISSIONER'S SEAL.]

JOHN A. SHIELDS,

*U. S. Commissioner.*

# EXHIBIT "A."

The accused, George G. Henry, named in the annexed warrant appearing before me this day, pursuant to adjournment for further examination, and said examination having been completed, and it appearing to me from the evidence produced that there is probable cause to believe the said George G. Henry guilty of the offenses charged in the annexed warrant and complaint contained, he is hereby committed for trial at the District of Columbia, that being the District in which the offenses charged is alleged to have been committed, and the said George G. Henry is hereby committed

to the custody of the United States Marshal for the Southern District of New York until a warrant for his removal shall issue by a United States District Judge, or he shall be otherwise dealt with according to law.

Dated, New York, March 7, 1913.

[COMMISSIONER'S SEAL.]

JOHN A. SHIELDS,

*U. S. Commissioner, Southern District of New York.*

To William Henkel, U. S. Marshal, for the Southern District of New York.

11

EXHIBIT "B."

Approved:

JOHN E. WALKER,

*Ass't U. S. Attorney.*

Before John A. Shields, Esq., U. S. Commissioner Southern District of New York.

UNITED STATES OF AMERICA,

v.

GEORGE G. HENRY.

*Complaint on Removal.*

R. S. U. S., 1014, 102, 103 and 104.

SOUTHERN DISTRICT OF NEW YORK, ss:

John E. Walker, being duly sworn, deposes and says that he is an Assistant United States Attorney for the Southern District of New York.

On information and belief deponent alleges that on the 10th day of February, 1913, the Grand Jury of the United States of America in and for the District of Columbia returned to the Supreme Court for the District of Columbia an indictment, wherein it was charged that George G. Henry, the defendant above named, theretofore, to wit, on the 7th day of January, 1913, in the District of Columbia, did commit an offense cognizable under Sections 102, 103 and 104 of the Revised Statutes of the United States.

On information and belief deponent further alleges as follows:

That on the 24th day of February, 1912, the House of Representatives of the 62d Congress of the United States, did pass and adopt a resolution known as House Resolution No. 429, in manner

12 and form as set forth in full in said indictment.

That on the 5th day of March, 1912, pursuant to the resolution aforesaid, the Committee on Banking and Currency of the House of Representatives did appoint a Sub-committee from among its members composed of the following representatives, to wit: Arsene P. Pujo, William C. Brown, Robert L. Doughton, Hubert D.

Stephens, James A. Daugherty, James F. Byrnes, George A. Neeley, Henry McMerran, Everis A. Hayes, Frank E. Guernsey, and William H. Heald, and did authorize and direct said Sub-committee to carry on the said investigation provided for by the aforesaid House Resolution No. 429; that on the 25th day of April, 1912, the House of Representatives did pass and adopt a certain other resolution known as House Resolution No. 504, in manner and form as set forth in full in the indictment aforesaid.

That from time to time after the passage and adoption of House Resolution No. 504 as aforesaid, and until the 7th day of January, 1913, inclusive, the Sub-committee aforesaid and the several members thereof acting for and on behalf of the said Committee on Banking and Currency and pursuant to the authority of the resolution aforesaid, was engaged in performing the duties of investigating and inquiring into the matters and things therein directed to be investigated and inquired into.

That on the 7th day of January, 1913, at the city of Washington in the District of Columbia, the said Committee aforesaid, acting as aforesaid, were duly assembled and acting for the purpose of further conducting the investigation and inquiry aforesaid; that one George

G. Henry, having been by authority of the House of Representatives, duly summoned to appear as a witness before said

Sub-committee at the time aforesaid, to give testimony upon the matters and things under inquiry by the said Committee on Banking and Currency and said Sub-committee under the resolution aforesaid, and having been then and there duly sworn by the chairman of said Committee, was thereupon examined by and on behalf of said Sub-committee, and did testify and declare in substance as set forth in pages 10 to the middle of page 15 inclusive of the indictment aforesaid.

That after testifying in the manner and form as hereinbefore referred to, and on the 7th day of January, 1913, at the District aforesaid, and during the examination and testimony of said George G. Henry as aforesaid, one Samuel Untermyer, acting for and on behalf of said Committee on Banking and Currency and of said Sub-committee, did then and there propound to said George G. Henry as such witness a question of the tenor following, that is to say,

"The Committee desires to know the names of National Banks and officers of National Banks who participated in this syndicate, operation of the California Petroleum Company",

(meaning thereby the names of National banks, if any there were, and the names of officers of National banks, who said George G. Henry, in his examination as such witness had testified were allotted participation in the syndicate formed by William Salomon and Company,—heretofore denominated 'New York Syndicate'—and to and for the account of which William Salomon and Company on October 2, 1912, sold and set over \$5,000,000 par value, preferred stock, and \$2,500,000 par value, common stock, of the California Petroleum

Corporation, and for and on account of which said William Salomon and Company sold said stock at a profit of nearly \$500,000 and distributed said profit among the participants in said 'New York Syndicate').

"And that thereupon, and at the time and place aforesaid, said George G. Henry did make a response to said question of the tenor following, to wit:

'Mr. Untermeyer, I very greatly regret that I do not feel at liberty to give the committee that information.'

And that thereupon, the said Samuel Untermeyer, acting as aforesaid, did then and there propound to said George G. Henry, as such witness, a question of the tenor following, to wit:

'You decline to do so?'

(meaning thereby to inquire, as the said George G. Henry well knew, whether said George G. Henry, by his response aforesaid, to the first mentioned question aforesaid, did thereby mean to decline and refuse to answer said first mentioned question.)

"And that thereupon, and at the time and place aforesaid, the said George G. Henry, did make a response to said last mentioned question, of the tenor following, to wit:

'Yes, sir, I respectfully decline to do so'.

"And that thereupon, and at the time and place aforesaid, said Samuel Untermeyer, acting as aforesaid, did then and there propound to said George G. Henry as such witness, a question of the tenor following, that is to say:

'Do you also decline to state the name of the fourth partner in your syndicate?'

(meaning thereby, as said George G. Henry well knew and understood, to inquire of said George G. Henry, the name of the banking firm in New York City, who, said George G. Henry, in his examination aforesaid, had testified was a member and had an interest of 12½ per centum in the syndicate formed by William Salomon and Company, heretofore denominated the 'Banking Group', of which William Salomon and Company, Lewisohn Brothers, and Hallgarten and Company were also members, each with an interest of 29.166 per centum, and for whose account William Salomon and Company had purchased the stock of the California Petroleum Corporation from Doheny & Canfield, and sold the same to the 'New York Syndicate' and to a syndicate in London, and who, after the listing of the stock of the California Petroleum Corporation on the New York Stock Exchange, had, through Lewisohn Brothers engaged in operations in the 'Exchange' in the purchase and sale of stock of the California Petroleum Corporation, for the purpose of making a market for said stock.)

"And that thereupon, and at the time and place aforesaid, said George G. Henry, as such witness, in response to said last mentioned question, did say:

'Yes.'

"And that thereupon, and immediately following the response of said George G. Henry as aforesaid, the said Samuel Untermeyer, acting as aforesaid, did then and there propound, to said George G. Henry as such witness, a question of the tenor following, that is to say:

'Who had an interest of twelve and a half per cent?'

(meaning thereby, as said George G. Henry well knew and understood, to inquire of said George G. Henry, the name of the banking firm in New York City, who, said George G. Henry, in his examination aforesaid, had testified was a member and had an interest of  $12\frac{1}{2}$  per centum in the syndicate formed by William Salomon and Company, heretofore denominated the 'Banking Group' of which William Salomon and Company, Lewisohn Brothers, and Hallgarten and Company were also members, each with an interest of  $29\frac{1}{2}$  per centum, and for whose account William Salomon and Company had purchased the stock of the California Petroleum Corporation from Deheny & Cantfield, and sold the same to the 'New York Syndicate' and to a syndicate in London, and who, after the listing of the stock of the California Petroleum Corporation on the New York Stock Exchange, had, through Lewisohn Brothers engaged in operations on the 'Exchange,' in the purchase and sale of stock of the California Petroleum Corporation, for the purpose of making a market for said stock.)

And that thereupon, said George G. Henry, did, at the time and place aforesaid, make a response to said last mentioned question of the tenor following, to wit:

'Yes, I do, Mr. Untermeyer.'

That each of the questions so propounded and set forth as aforesaid was then and there under the circumstances, pertinent to the investigation and inquiry then and there being made by said Subcommittee, and that said George G. Henry, by his several responses made as aforesaid, did thereby then and there unlawfully refuse to answer the same; against the form of the statute in such case made and provided, and against the peace and government of the said United States.

On information and belief deponent further alleges that said George G. Henry aforesaid, is at the present time physically within the territory of the Southern District of New York.

The sources of deponent's information and the grounds of his belief as to the matters and things hereinbefore set forth upon information and belief are an exemplified copy of the indictment hereinbefore referred to, under the hand of John R. Young, Clerk of the Supreme Court of the District of Columbia, and under the seal of said Court, and under the hand of Harry M. Clabaugh, Chief Justice of said Court; and a bench warrant issued out of said Supreme Court for the District of Columbia, for the apprehension of said George G. Henry, both of which are annexed hereto and made a part hereof; together with official communications received by the United States Attorney for the Southern District of New York from the United States Attorney for the District of Columbia.

Wherefore, deponent asks that a warrant be issued for the apprehension of said George G. Henry, and that he be removed from the Southern District of New York to the District of Columbia, in accordance with the statute in such case made and provided.

JOHN E. WALKER,

Subscribed and sworn to before me this 14 day of February, 1913.

JOHN A. SHIELDS,  
United States Commissioner, Southern  
District of New York.

18 [Endorsed:] Before John A. Shields, Esq., U. S. Commissioner for the Southern District of New York. United States of America vs. George G. Henry. Complaint on Removal. R. S. U. S. 1014, 102, 103, 104.

19

## EXHIBIT "C."

In the Supreme Court of the District of Columbia.

*Transcript of Record.*

To all to whom these presents come, Greeting:

UNITED STATES OF AMERICA,  
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, among others, was the following proceeding, to-wit:

Filed in Open Court February 10, 1913. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia, Holding a Criminal Term, January Term, A. D. 1913.

DISTRICT OF COLUMBIA, ss:

The Grand Jurors of the United States of America in and for the District of Columbia aforesaid, upon their oath, do present:

That on, to-wit, the twenty-fourth day of February, in the year of our Lord one thousand nine hundred and twelve, the House of Representatives of the Sixty-Second Congress of the United States, did pass and adopt a resolution which was marked and known as House Resolution Numbered Four hundred twenty-nine, of the tenor following, that is to say:

20 "Resolved, That in order to obtain full and complete information of the banking and currency conditions of the United States for the purpose of determining what legislation is needed, the Committee on Banking and Currency is authorized and directed to make a full investigation thereof, including all matters touched upon in House Resolution Numbered Four hundred and five." (meaning thereby a certain resolution introduced in the House of Representatives February 3, 1912, by Robert L. Henry, a Member of said House) "within the jurisdiction of said Committee; and the said committee is authorized, as a whole or by subcommittee, to

sit during sessions of the House and the recess of Congress, to compel the attendance of witnesses, to send for persons and papers, to administer oaths to witnesses, and to employ experts, counsel, accountants, and clerical and other assistants. "The Speaker shall have authority to sign and the Clerk to attest subpoenas during the sessions or recess of Congress."

That on, to-wit, the fifth day of March, in the year of our Lord one thousand nine hundred and twelve, and pursuant to and by authority of said House Resolution Numbered Four hundred twenty-nine, the Committee on Banking and Currency of the House of Representatives, did appoint a Sub-committee from among its members, composed of the following representatives, to-wit: Arsene P. Pujo, William G. Brown, Robert L. Doughton, Hubert D. Stephens, James A. Daugherty, James F. Byrnes, Geo. A. Neeley, Henry McMorran, Everis A. Hayes, Frank E. Guernsey, and William H. Heald, and did authorize and direct said subcommittee to carry on the investigation and inquiry provided for by said House Resolution Numbered Four Hundred twenty-nine, and of which said Subcommittee said Arsene P. Pujo was made chairman, and that said Arsene P. Pujo was also the chairman of said Committee on Banking and Currency.

And that thereafter and on the twenty-fifth day of April in the year of our Lord one thousand nine hundred and twelve, the House of Representatives did pass and adopt a certain other resolution marked and known as House Resolution Numbered Five hundred four, by the tenor following, that is to say:

21 "Whereas H. Res. 429" (meaning thereby said House Resolution Number Four hundred twenty-nine) "was heretofore passed for the purpose of directing the conduct of an investigation into certain of the matters covered by this resolution, and it has since been ascertained that said H. Res. 429" (meaning thereby said House Resolution Numbered Four hundred twenty-nine) "is insufficient in the delegation of its powers to permit of the scope of inquiry which is believed to be necessary as a basis for remedial legislation on the subjects covered by this resolution:

"Resolved, that H. Res. 429" (meaning thereby said House Resolution Numbered Four hundred twenty-nine) "is hereby amended so that the same shall read as follows:

"Whereas legislation is now pending involving important changes in our national currency and monetary system and vitally affecting our national banks and other financial institutions, and various bills have also been introduced, and are now under consideration by Congress having for their purpose the amendment and supplementing of the Act approved July second, eighteen hundred and ninety, entitled—An Act to protect trade and Commerce against unlawful restraints and monopolies, generally known as the Federal anti-trust law; and

"Whereas bills are also pending or under consideration to regulate industrial corporations engaged in interstate commerce through Federal incorporation, supervision, and otherwise, and legislation is believed to be necessary to further control the incorpora-

tion, management and financial operations of railroad corporations that are now subject to the jurisdiction of the Interstate Commerce Commission, including, among other things, the regulation of the issue and sale of their securities and the protection of minority stockholders; and

"Whereas it has been charged, and there is reason to believe, that the management of the finances of many of the great industrial and railroad corporations of the country engaged in interstate commerce is rapidly concentrating in the hands of a few groups of financiers in the city of New York and their associates in New York and other cities, and that these groups, by reason of their control over the funds of such corporations and the power to dictate the depositories of such funds, and by reason of their relations with the great life insurance companies with headquarters in New York City, and by other means, have secured domination over many of the leading national banks and other moneyed institutions and life insurance companies in the city of New York and in other cities to which they direct such patronage and over the vast deposits of money and of the other assets of such institutions, thus enabling them and their associates to direct the operations of the latter in the use of the money belonging to their depositors and the stockholders and in the purchase and sale of securities and loans of money by such banks and other moneyed institutions and life insurance companies, and that these institutions and their funds are being used to further the enterprise and increase the profits of these groups of individuals from such transactions and to augment their power over the finances of the country and to control the money, exchange, security, and commodity markets, and prevent competition with the enterprises in which they are interested, to the detriment of interstate commerce and of the general public; and

22 "Whereas it has been further charged and is generally believed that these same groups of financiers have so entrenched themselves in the control of the aforesaid financial and other institutions and otherwise in the direction of the finances of the country that they are thereby enabled to use the funds and property of the great national banks and other moneyed corporations in the leading money centers to control the security and commodity markets; to regulate the interest rates for money; to create, avert and compose panics; to dominate the New York Stock Exchange and the various clearing-house associations throughout the country, and through such associations and by reason of their aforesaid control over the aforesaid railroads, industrial corporations, and moneyed institutions, and others, and in other ways resulting therefrom, have wielded a power over the business, commerce, credits and finances of the country that is despotic and perilous and is daily becoming more perilous to the public welfare; and

"Whereas the national banks and other moneyed institutions controlled as aforesaid are charged to have been, and to be, engaged in the promotion, underwriting and exploitation of speculative enterprises and in the purchase and sale of securities of such enter-

prises, and in acquiring, directly or indirectly, stocks of other banking institutions, and absorbing competitors and in using their corporate funds and credit for such purposes, either alone or in conjunction with those by whom they are controlled; and

"Whereas it is deemed advisable to gather the facts bearing on the aforesaid conditions and charges or in any way relating thereto and to any of the subjects above mentioned as a basis for remedial and other legislative purposes; Therefore, be it

"Resolved, That the Members now or hereafter constituting the Committee on Banking and Currency, by a subcommittee consisting of the eleven members thereof already appointed under H. Res. 429" (meaning thereby said House Resolution Numbered Four hundred twenty-nine) "and by such substituted members as may be from time to time selected from the members of the said committee to fill vacancies in the subcommittee, is authorized and directed—

"First. To fully investigate and inquire into each and all of the above recited matters and into all matters and subjects connected with or appurtenant to or bearing upon the same.

"Second. To fully inquire into and investigate among other things whether and to what extent—

"(a) Individuals, firms, national banks and other moneyed corporations are engaged in or connected with the management of financial affairs of interstate railroad, or industrial corporations, or life insurance companies, and what potential or other power they have or exercise over such corporations, and how and to what uses the bankable funds of such interstate railroad or industrial or other corporation are applied.

"(b) The marketing of the securities that have been from time to time issued by interstate railroad and industrial corporations has been by competitive bidding or otherwise.

"(c) Changes have been procured in the general laws of any of the States under which such interstate corporations are organized in the interest or upon the procurement of such corporations, and for what reason and by what methods and influences such changes were accomplished".

23 "(d) Individuals, firms, national banks, and other moneyed corporations interested or in anywise connected with such interstate corporations are enabled by reason of their relations or connections with other Interstate corporations or with other individuals, firms, national banks, moneyed corporation, or life insurance companies, or otherwise to prevent or suppress competition in the interest of such interstate corporations, or to protect or assist the latter in preventing or suppressing competition.

"(e) Such interstate corporations and the individuals, firms, national banks and moneyed corporations are mutually benefited and protected against competition and otherwise by the relations existing between them."

"(f) National banks and other moneyed and other institutions are directly or indirectly owned, dominated or controlled through

their directors or through stock ownership, official management, patronage, or otherwise by the same persons, interests, groups, of individuals or corporations that are also directly or indirectly interested in other national banks or moneyed or other corporations located in the same city and in interstate corporations that are customers of said national banks and other moneyed corporations.

"(g) The same individuals are officers or directors of, or were or are directly or indirectly interested in or dominate or control, or heretofore dominated or controlled, in any way, more than one national bank or other moneyed corporation.

"(h) The funds or credit of national banks and other moneyed corporations or life insurance companies are or have been used or employed other than in making current loans to merchants or on commercial paper, by whose influence or direction such funds or credit were so used or employed, and particularly whether and to what extent such funds are or have been employed: First, in the purchase of securities from bankers or others in any way interested in or connected with such corporations; second, in the guaranty or underwriting of securities or syndicate transactions, either alone or in conjunction with others, third, in loans on notes secured by bonds, stocks, or other collateral; fourth, in loans or on purchases of stocks of other banks or of any trust or investment company or financial or moneyed corporation; and fifth, in any form of investment alone or in joint account with others.

"(i) Any national bank or other moneyed corporation, whether directly or indirectly, or whether through or by means of another corporation having substantially the same officers, management, control, or stockholders, or with stock paid for by the dividends of a parent or affiliated company, and, whether alone or with others, has acted as an issuing house or in offering securities to the public or to investors by prospectus, advertisement, solicitation, or otherwise, or has speculated, or is speculating in stocks, and if so, the nature of all such transactions and the profits and all other details thereof.

"(j) The management and operations of the New York Stock Exchange and the New York Clearing House Association are, or may be, directly or indirectly, dominated, controlled, or otherwise affected by any individuals or groups of individuals who control or are influential in directing the use or deposit of the funds of national banks in the city of New York, or of interstate railways or industrial corporations, or life insurance companies, and the relations that the New York Stock Exchange and the New York Clearing House bear to such individuals and groups of individuals and to their financial transactions and to our commercial and financial systems and to interstate and foreign commerce.

"(k) Any individual, firm, or corporation, or any one or more groups of such individuals, firms, or corporations, may or can affect the security markets of the country through the New York Stock Exchange, or can create, avert or compose panics by the control of the use and disposition of moneys in the banks and other moneyed

or other corporations that are controlled by such individuals, firm, or corporation, or by other means.

"(7) There is any connection between the relation of bankers, banking firms and their associates to the railroad and industrial corporations engaged in interstate commerce, and the relations of such bankers, banking firms and their associates to the national banks and other moneyed or other corporations, and the relations of any of these interests to any of the others that operate to protect such interstate corporations against competition or are or may be used for that purpose.

"Third. To investigate, find, and report the facts bearing upon the payment of political contributions to national campaign funds by or in the interest of national banks and interstate railroad and industrial corporations, and by all persons who are officers or directors thereof, and by other persons who are directly or indirectly in control of or connected with such corporations, together with the amounts of such contributions and the circumstances attending the same.

"Fourth. To investigate the methods of financing the cash requirement of interstate corporations and of marketing their securities, and the relations of national banks and others to such transactions.

"Fifth. Said committee as a whole or by subcommittee is authorized to sit during the sessions of the House and during the recess of Congress. Its hearings shall be open to the public. The Committee as a whole or by subcommittee is authorized to hold its meetings both during the sessions of Congress and throughout the recesses and adjournments thereof and in such cities and places in the United States as it may from time to time designate; to employ counsel, experts, accountants, bookkeepers, clerical and other assistants; may summon and compel the attendance of witnesses; may send for persons and papers; and administer oaths to witnesses. The Comptroller of the Currency, the Secretary of the Treasury, and the Commissioner of the Bureau of Corporations, and their respective assistants and subordinates, are hereby respectively directed to comply with all directions of the committee for assistance in its labors, to place at the service of the committee all the data and records of their respective departments, to procure for the committee from time to time such information as is subject to their control or inspection, and to allow the use of their assistants for the making of such investigations with respect to corporations under their respective jurisdictions as the committee or any subcommittee may from time to time request.

25 "No person shall be excused from giving testimony or from answering any question or from otherwise disclosing any fact within his knowledge, as an individual or as an officer or director of a corporation, or otherwise, or from producing any book, paper or document on the ground that the giving of such testimony or the production of such book, paper or document would tend to incriminate him, or for any other reason; but every person so testifying shall be granted immunity from prosecution with respect to any

matter or thing concerning which he may be interrogated and as to which he shall truthfully make answer under oath upon such investigation. The Speaker shall have authority to sign and the Clerk to attest subpoenas during the recess of Congress".

That on the said twenty-fifth day of April, in the year aforesaid, and at the time of the passage and adoption of said House Resolution Numbered Five hundred four, there were pending before the Congress of the said United States and in the Senate and House of Representatives thereof, certain Bills providing for amendments to and changes in the Federal Statutes then in force relating to the National Currency and monetary system of the said United States, and relating to the National banks and other financial institutions organized and doing business by virtue of the Federal Statutes then existing and in force and National banks and other institutions which might thereafter be organized, and relating to the supervision of and limitations upon the conduct of officers of said banks as the same might affect their relations to and actions upon the affairs of said banks, and also certain other Bills providing for the regulation and control of railroad and industrial corporations engaged in interstate commerce in the said United States. That the aforesaid bills are so numerous and the terms and provisions thereof so varied and extensive as to prevent the grand jurors aforesaid from setting them forth in this indictment by their tenor or otherwise more fully alleging the terms thereof.

That from time to time after the passage and adoption of House Resolution Numbered Five hundred four as aforesaid, and until the seventh day of January, inclusive, in the year of our Lord One Thousand nine hundred and thirteen, the Subcommittee aforesaid, and the several members thereof as aforesaid, acting for and on behalf of said Committee on Banking and Currency, and pursuant to and by authority of House Resolution Numbered Five hundred four, as aforesaid, was engaged in performing the duties of investigating and inquiring into the matters and things directed to be investigated under said House Resolution Numbered Five hundred four, and had, by the examination of witnesses summoned and appearing by authority and command of the House of Representatives pursuant to said House Resolution Numbered Five hundred four, adduced, among other things, certain evidence tending to prove, in substance and effect, as follows: that in the City of New York, State of New York, there was a certain voluntary association of individuals known as and called the "New York Stock Exchange", which for many years had, and still did, maintain a certain building and place in said City, commonly called the "New York Stock Exchange", (hereinafter denominated Exchange), with essential facilities for the purchase and sale of the capital stock, bonds, and other forms of securities, of corporations, organized and doing business in the United States and foreign countries, including the great railroad, industrial, mercantile, and banking corporations carrying on their business throughout the said United States and between the several States; that before the securities of said corporations could be dealt in by purchase, sale, or

otherwise, on the "Exchange", it was, by the rules of said "New York Stock Exchange", required that such securities be listed by said "New York Stock Exchange", that is to say that by orders of a certain committee of said "New York Stock Exchange",

27 to-wit, the Governing Committee, to whom the authority was delegated, such securities be allowed to become the subject of purchase and sale upon and in the "Exchange"; that by reason of the magnitude of trading through purchase and sale of corporate securities as aforesaid on the "Exchange", the "Exchange" had become and was the leading market in the United States, as well as a great World market, for the purchase and sale of securities as aforesaid. That the quotations for the purchase and sale of such securities on the "Exchange" were daily disseminated, distributed and published through and by means of the mails of the United States and by means of the telegraph and by the daily newspapers throughout the United States, and were generally accepted and adopted by interested persons, firms and corporations concerned in the ownership, the purchase and sale and otherwise in such securities, as a basis for fixing and determining the market value of such securities; that in the City of New York, there were many banks, including National Banks of the United States which made a practice of lending money and accepting as collateral security for the repayment thereof, the stocks, bonds and other forms of securities so listed and dealt in on the "Exchange", and that in ascertaining and determining the values of said corporate securities as such collateral for the loans so granted by them as aforesaid, the said Banks and the officers thereof, exercising the authority of granting loans therefor as aforesaid, did very generally consider and accept the said quotations for the purchase and sale of corporate securities as they occurred on the "Exchange, and as so disseminated, distributed and published as aforesaid, as a basis for ascertaining and deciding the market value of said corporate securities, and hence

28 that corporate securities so listed and dealt in on the "Exchange" thereby became and were more available for use as such collateral security in obtaining loans from National banks and other financial institutions throughout the City of New York and elsewhere, than they would otherwise be.

And the said Jurors aforesaid upon their oath aforesaid do further present:

That on the seventh day of January, in the year of our Lord One thousand nine hundred and thirteen, and at the City of Washington, in the District aforesaid, the Subcommittee aforesaid, which was then and there acting for and on behalf of the said Committee on Banking and Currency and by the authority and direction of the House of Representatives as provided by said House Resolution Numbered Five hundred four, were duly assembled, and acting for the purpose of further conducting the investigation and inquiry by said House Resolution Numbered Five hundred four directed to be made, and with the evidence tending to prove the matters and things hereinbefore set forth, before it, one George G. Henry, late of the District aforesaid, did appear before the said Subcommittee

acting as aforesaid, for examination as a witness, the said George G. Henry having been by the authority of the House of Representatives, duly summoned to appear as such witness before said Subcommittee, to give testimony upon the matters and things under inquiry by the said Committee on Banking and Currency and said Subcommittee, under said House Resolution Numbered Five hundred four, and was then and there duly sworn by said Arsene P. Pujo, chairman as aforesaid, and did take his corporal oath as such witness that the evidence which he should give, in and upon his examination as such witness, should be the truth, the whole truth and nothing but the truth; and that thereupon the said George G. Henry was examined by and on behalf of said Subcommittee, acting as aforesaid, and did upon the said examination, testify and declare, in substance, as follows:

29 That he, the said George G. Henry, was a partner in the firm of William Salomon & Company, engaged in the City of New York in the business of banking; that in the month of September, 1912, the California Petroleum Corporation was incorporated under the laws of the State of Virginia by the firm — of Doheny and Canfield, for the purpose of acting as a holding company for the capital stock of two corporations carrying on the business of producing and selling oil in the State of California; that the capital stock of the California Petroleum Corporation was \$15,000,000 par value of preferred stock and \$17,500,000 par value of common stock, each share of the par value of One hundred dollars. That on, to-wit, September 16, 1912, William Salomon and Company agreed to purchase of Doheny and Canfield, \$10,000,000 par value, of preferred stock, and \$7,572,845 par value, of the common stock of the California Petroleum Corporation for the sum of \$8,215,662. That contemporaneously with the incorporation of the California Petroleum Corporation and the agreement to purchase stock as aforesaid, William Salomon and Company formed a syndicate composed of themselves, Lewisohn Brothers, Hallgarten and Company, bankers in New York City, and a certain other banking firm in said City (whose name witness did not disclose) for the purpose of participating in the purchase of said stock under said agreement and otherwise dealing therewith as hereafter appears (which said syndicate will hereafter be referred to as the "Banking Group"). That the unnamed participant in the "Banking Group" was granted an interest of  $12\frac{1}{2}$  per cent. therein and each of the other three participants  $29\frac{1}{66}$  per cent.; that thereupon William Salomon and Company in behalf of the "Banking Group," sold to a syndicate in London, England, \$5,000,000, par value, preferred stock, 30 and \$2,500,000, par value, common stock, of the California Petroleum Corporation, plus accrued dividends on the preferred stock for the sum of \$5,000,000, and thereafter had no interest in the stock thus sold. That at the same time William Salomon and Company formed a syndicate (hereafter referred to as "New York Syndicate") composed of, one hundred and four participants, including the members of the "Banking Group," to which they sold \$5,000,000 par value, of the preferred stock, and \$2,500,000 par

value, of the common stock of the California Petroleum Corporation, plus accrued dividends on preferred stock, for the sum of \$5,000,000 and by the sales to the London and New York Syndicates as aforesaid, a profit was realized by the "Banking Group" of \$1,784,338. in cash and \$25,729. shares of the common stock, being the balance unsold, amounting to the par value of \$2,572,846. Among the participants in the New York Syndicate were three corporations; also certain banking firms or institutions and as to whether these were incorporated institutions George G. Henry was uncertain; two of said banking institutions being located in New York City, and the other in another city of the United States. One of said banking institutions in New York City participated to an amount of \$500,000., of the par value of the capital stock. That there were also fifteen individuals participating who were officers of seven national banks (meaning thereby banks organized and doing business under the statutes of the said United States), four of said National banks being located in the City of New York, two in the City of Chicago, Illinois, and one in the City of Detroit, Michigan; also six individuals who were officers of four trust companies, three of which companies were located in the City of New York and one in the City of Chicago; also three individuals who were officers of

31 banks outside of the City of New York. That the total amount of participation by officers of banks was \$535,000, the largest single participation being \$50,000. granted to an officer of a national bank located in the City of New York. That there was also a trust company in the city of New York participating to the amount of \$50,000., but that no National Bank participated. The total amount of participations in the syndicate by banks and banking institutions was \$600,000, and the total number of individuals participating who were officers of said banks and institutions, including the national banks, was twenty-four. In some instances, banks, as well as officers thereof, participated. Altogether participations to the amount of \$1,085,000, par value of the stock were granted to banking institutions and officers of banking institutions. That it was the usual practice of William Salomon & Company to grant participation in like transactions to banks and trust companies, including national banks in the city of New York and elsewhere throughout the United States, and it was not unusual for both the National Banks and officers thereof to participate in the same syndicate. That the said George G. Henry did not want to disclose the names of the participants in the New York Syndicate, although he understood it to be the wish of the Subcommittee that he should, for the reason that he would consider it dishonorable to reveal the names of his customers unless compelled to do so.

That the members comprising the New York Syndicate were offered participation by William Salomon and Company by letter, but before acceptances had been received from all those to whom participation had so been offered, all the stock, to-wit, \$5,000,000, par value, preferred, and \$2,500,000, par value, of common, were sold by William Salomon and Company in behalf of the New  
32 York Syndicate at a profit of nearly \$500,000, which sale was completed on the same day that the stock was allotted

and sold to the New York Syndicate. Through the sale of the New York Syndicate stock as aforesaid, the members of the syndicate who were officers of banks and to whom participation has been allotted, and in some cases before they had accepted the allotment and legally committed themselves, realized a profit from the transaction of about \$50,000, and thereby, in effect, received a present of their proportionate share of the profits as aforesaid. That practically all the stock of the New York Syndicate was sold before any acceptances to participate therein had been received by William Salomon & Company, but that the profits realized were nevertheless distributed among those to whom participation had been offered as aforesaid. That the New York Syndicate participants never paid anything for or on account of their participation and never had possession of any of the stock certificates, but the same were held by William Salomon & Company as the syndicate managers, and on the same day said stock was by them set over to the New York Syndicate, to-wit, October 2, 1912, the transactions were entered on the books of William Salomon & Company by debiting the full amount of stock to the syndicate account and crediting the syndicate account with the various sales, whereupon the stock was delivered to the purchasers who were customers of William Salomon & Company and that some of said customers were participants in the New York Syndicate, but none of the bank officers, who were participants in the New York Syndicate, purchased any of Syndicate stock. They only took their profits from the New York Syndicate, though they had never contributed any money to the New York Syndicate, and were not legally committed as participants therein.

33 That after the sale of the New York Syndicate stock as aforesaid, and, on, to-wit, October 5, 1912, William Salomon & Company procured the listing of the stock of the California Petroleum Corporation on the New York Stock Exchange, that after the said stock was so listed and until the present (to-wit, January 7, 1913), Lewisohn Brothers conducted on the Exchange a market operation by the purchase and sale of said stock, for and on account of the "Banking Group" (William Salomon and Company, Lewisohn Brothers, Hallgarten & Company, and the undisclosed firm who had been granted a participation of 12½ per cent). The aforesaid market operations by Lewisohn Brothers on the "Exchange" was conducted for the purpose of making a market for the stock of the California Petroleum Corporation by creating a ready demand among the public for the purchase and sale of said stock. For this purpose, Lewisohn Brothers daily engaged on the "Exchange" in buying and selling the stock, which was done each day by the placing of orders with various brokers (members of the New York Stock Exchange operating on the Exchange), for purchase of the stock at certain prices and for the sale of the stock at certain prices, each of said brokers acting under such orders and so purchasing and selling the stock as aforesaid, being unaware that the other brokers so purchasing and selling the stock were likewise acting by the orders of Lewisohn Brothers, as aforesaid. That in the market operations aforesaid, the "Banking Group" lost money, but this they expected to

do in accomplishing their purpose of making a market for the stock. That although the stock of the "New York Syndicate" was sold by William Salomon & Company as aforesaid at \$40 per share, and the stock of the "Banking Group" had been sold in part at \$40 and in part at \$45 per share, the market operations aforesaid on the "Exchange" were carried on at prices ranging between \$62.50 and \$70 per share, and rose as high as \$72 per share, shortly after operations began on the "Exchange" in the month of October. During the period the market operations aforesaid, the public (meaning thereby those not concerned in the organization of the California Petroleum Corporation or in the flotation of its stock as hereinbefore set forth) became purchasers of the stock on the "Exchange" at prices ranging between \$50 and \$70 per share, and that the stock is now, to-wit, January 7, 1913, selling at about \$50 per share. That the natural market of the stock of the California Petroleum Corporation would not have been the same without the market operations carried on by Lewisohn Brothers for the "Banking Group" as aforesaid, but by reason thereof the stock attained a much better and wider market than it would have had without the market operations aforesaid and that there are now (January 7, 1913) nearly two thousand registered stockholders of the California Petroleum Corporation.

And that thereupon and on the seventh day of January, in the year aforesaid and at the District aforesaid, and during the examination and testimony of the said George G. Henry as aforesaid, one Samuel Untermyer, acting for and on behalf of said Committee on Banking and Currency and said Subcommittee, did then and there propound to said George G. Henry as such witness a question of the tenor following, that is to say:

"The Committee desires to know the name of National Banks and officers of National Banks who participated in this syndicate operation of the California Petroleum Company."

(meaning thereby the name of National Banks, if any there were, and the names of officers of National banks, who said George G. Henry, in his examination as such witness had testified were allotted participation in the syndicate formed by William Salomon and Company—heretofore denominated "New York Syndicate"—and to and for the account of which William Salomon and Company on October 2, 1912, sold and set over to \$5,000,000 par value, preferred stock, and \$2,500,000 par value, common stock, of the California Petroleum Corporation, and for and on account of which said William Salomon and Company sold said stock at a profit of nearly \$500,000 and distributed said profits among the participants in said "New York Syndicate").

And that thereupon, and at the time and place aforesaid, said George G. Henry did make a response to said question of the tenor following, to-wit:

"Mr. Untermyer, I very greatly regret that I do not feel at liberty to give the committee that information."

And that thereupon the said Samuel Untermyer, acting as afore-

said, did then and there propound to said George G. Henry, as such witness, a question of the tenor following, to wit:

"You decline to do so?"

(meaning thereby to inquire, as the said George G. Henry well knew, whether said George G. Henry, by his response aforesaid, to the first mentioned question aforesaid, did thereby mean to decline and refuse to answer said first mentioned question).

And that thereupon and at the time and place aforesaid the said George G. Henry did make a response to said last mentioned question, of the tenor following, to-wit:

"Yes, sir, I respectfully decline to do so."

And that thereupon, and at the time and place aforesaid, said Samuel Untermeyer, acting as aforesaid, did then and there propound to said George G. Henry, as such witness, a question of the tenor following, that is to say:

"Do you also decline to state the name of the fourth partner in your syndicate?"

(meaning thereby, as said George G. Henry well knew and understood, to inquire of said George G. Henry, the name of the Banking firm in New York City, who, said George G. Henry, in his examination aforesaid, had testified was a member and had an interest

36 of  $12\frac{1}{2}$  per centum in the syndicate formed by William Salomon and Company, heretofore denominated the "Banking Group" of which William Salomon & Company, Lewisohn Brothers and Hallgarten & Company were also members, each with an interest of 29  $\frac{1}{66}$  per centum, and for whose account William Salomon and Company had purchased the stock of the California Petroleum Corporation from Doheny and Canfield, and sold the same to the "New York Syndicate" and to a syndicate in London, and who, after the listing of the stock of the California Petroleum Corporation on the New York Stock Exchange, had, through Lewisohn Brothers, engaged in operations on the "Exchange" in the purchase and sale of stock of the California Petroleum Corporation, for the purpose of making a market for said stock).

And that thereupon, and at the time and place aforesaid, said George G. Henry, as such witness, in response to said last mentioned question, did say:

"Yes."

And that thereupon and immediately following the response of said George G. Henry as aforesaid, the said Samuel Untermeyer, acting as aforesaid, did then and there propound, to said George G. Henry, as such witness, a question of the tenor following, that is to say:

"Who had an interest of twelve and a half per cent."

(meaning thereby, as said George G. Henry well knew and understood, to inquire of said George G. Henry, the name of the banking firm in New York City, who, said George G. Henry in his examination aforesaid, had testified was a member and had an interest of  $12\frac{1}{2}$  per centum in the syndicate formed by William Salomon and

37 Company, heretofore denominated the "Banking Group," of which William Salomon and Company, Lewisohn Brothers and Hallgarten and Company were also members, each with an interest of 29 1/66 per centum, and for whose account William Salomon and Company had purchased the stock of the California Petroleum Corporation from Doheny & Canfield, and sold the same to the "New York Syndicate" and to a syndicate in London, and who, after the listing of the stock of the California Petroleum Corporation on the New York Stock Exchange, had, through Lewisohn Brothers, engaged in operations on the "Exchange," in the purchase and sale of stock of the California Petroleum Corporation, for the purpose of making a market for said stock.)

And that thereupon, said George G. Henry, did, at the time and place aforesaid, make a response to said last mentioned question of the tenor following, to-wit:

"Yes, I do, Mr. Untermyer."

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That each of the questions so propounded and set forth by their tenor as aforesaid, were then and there and under the circumstances aforesaid, pertinent to the investigation and inquiry then and there being made by said subcommittee, acting as aforesaid, and that the said George G. Henry, by his response so made to the first mentioned question, and by his responses so made to each of the several other and further questions, did thereby then and there unlawfully refuse to answer the same; against the form of the statute in such case made and provided, and against the peace and government of the said United States.

CLARENCE R. WILSON,

*Attorney of the United States in and for the  
District of Columbia.*

38

*Authentication.*

Supreme Court of the District of Columbia.

I, John R. Young, Clerk of the said Court, do hereby certify that the copy of indictment, annexed to this certificate, is a true copy of the original on file and of record in said office, and that said original indictment is pending in said Court.

Witness my hand and the seal of said Court this 10th day of February, 1913.

[Seal of the Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

I, Harry M. Clabaugh, Chief Justice of said Court, do certify the foregoing attestation by John R. Young, Clerk of the said Court, to be in due form.

Witness my hand and seal this 10th day of February, 1913.

HARRY M. CLABAUGH. [SEAL.]  
*Chief Justice.*

I, John R. Young, Clerk of said Court, hereby certify that the Honorable Harry M. Clabaugh, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing and attesting the same, Chief Justice of said Court, duly commissioned and qualified.

Witness my hand and the seal of said Court, this 10th day of February, 1913.

[Seal of the Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

39 (Endorsed:) No. 28823. United States vs. George G. Henry. Violation Sections 102, 103 and 104 of Revised Statutes. Witness: Arsene P. Pujo. A true bill. Edwd. Schwartz, Foreman.

40

EXHIBIT "D."

In the Supreme Court of the District of Columbia, Holding a Criminal Term.

Criminal, No. 28823.

THE UNITED STATES

v.

GEORGE G. HENRY.

Indicted for Violation Sections 102-103-104 Revised Statutes.

The President of the United States to the United States Marshal for the District of Columbia, Greeting:

You are hereby commanded to take the defendant George G. Henry, if to be found in your District, and him have before the Criminal Court for the said District of Columbia on the — day of —, 191— (immediately), to answer the United States touching the offense charged against him.

Hereof fail not and have there then this writ, so indorsed as to show how you have executed it.

Witness, the Honorable Harry M. Clabaugh, Chief Justice of said Court, the 10th day of February, A. D. 1913.

[Seal of the Supreme Court of the District of Columbia.]

J. R. YOUNG, *Clerk,*

By E. J. McKEE,

*Assistant Clerk.*

41 Endorsed: Criminal Court No. 1. Criminal No. 28823. United States v. George G. Henry. Bench Warrant. Issued February 10, 1913. Marshal's Return: — — —, U. S. Marshal.

42

## EXHIBIT "E."

The President of the United States of America to the Marshal of the United States for the Southern District of New York and to his deputies or any or either of them:

Whereas, complaint on oath hath been made to me, charging that George G. Henry did on or about the 7 day of January, in the year one thousand nine hundred and thirteen at the District of Columbia commit an offense cognizable under Sections 102, 103 and 104 of the Revised Statutes of the United States, and which said offense is more particularly set forth in a certified copy of the complaint hereunto annexed and to which reference is hereby made for greater certainty against the peace of the United States and their dignity, and against the form of the statute of the United States in such case made and provided. And it being satisfactorily proven to me that the said George G. Henry is now in the Southern District of New York.

Now, therefore, you are hereby commanded in the name of the President of the United States of America, to apprehend the said George G. Henry and bring his body forthwith before me, or some Judge or Justice of the United States, wherever in the State of New York he may be found that he may then and there be dealt with according to law for the said offense.

Given under my hand and seal, this 14 day of February in the year of our Lord one thousand nine hundred and thirteen.

[SEAL.]

JOHN A. SHIELDS,

*United States Commissioner for the  
Southern District of New York.*

HENRY A. WISE,

*United States Attorney.*

43 Endorsed: Sec. 101, 102, 103 and 104 Revised Statutes.  
The United States of America vs. George G. Henry. Warrant  
to Apprehend. Henry A. Wise, United States Attorney.

I hereby depute — to execute the within process.

Dated, New York, Feb. 14/13.

20168.

WM. HENKEL,  
*U. S. Marshal.*

Def't disch'd on bail to await exam.

JOHN A. SHIELDS,  
*U. S. C.*

Received this warrant on the 14 day of Feb'y, 1913, at New York City and executed the same by arresting the within named George G. Henry at New York City on the 14 day of Feb. 1913, and have his body now in court as within I am commanded.

W. HENKEL,  
*U. S. Marshal.*

The within named accused George G. Henry being arrested and brought before me on the within warrant and the charge herein contained being duly explained to said accused and he being duly cautioned and informed of his rights in the matter says that he demands an examination and the said accused George G. Henry is hereby committed to the custody of the U. S. Marshal for the Southern District of New York to be brought before me for examination on \_\_\_\_\_ at \_\_\_\_\_ o'clock P. M. in default of \$2,000 bail.

New York, Feb. 14, 1913.

JOHN A. SHIELDS,  
*U. S. Commissioner, S. D. of N. Y.*

To William Henkel, Esq., U. S. Marshal.

Attendance and examination adj. February 27, 1913, at 11 A. M.  
Dated Feb. 20/13.

JOHN A. SHIELDS,  
*U. S. Comm.*

Attendance and further examination adj'd to March 7, 1913, at 11 A. M.  
Feb. 27, 1913.

JOHN A. SHIELDS, *U. S. C.*

44 [Endorsed:] United States District Court, Southern District of New York. George G. Henry v. William Henkel, Marshal &c. Petition for Habeas Corpus. Cravath & Henderson, Attorneys for Petitioner, 52 William Street, Borough of Manhattan, New York City. U. S. District Court S. D. of N. Y. Filed Mar. 7, 1913.

45

#### EXHIBIT F.

#### *Money Trust Investigation.*

Subcommittee of the Committee on Banking and Currency.

HOUSE OF REPRESENTATIVES,  
WASHINGTON, D. C., MONDAY, *January 6, 1913.*

The Subcommittee met at 2:30 o'clock P. M.

Present: Messrs. Pujo (Chairman), Brown, Stephens, Byrnes, Daugherty and Heald.

Present also: Samuel Untermeyer, Esq., of New York City, Counsel for the Committee, and G. Carroll Todd, Assistant Counsel for the Committee.

[SEAL.]

46

*Testimony of Mr. George G. Henry.*

(The witness was sworn by the Chairman.)

Mr. Untermeyer: Where do you reside?

Mr. Henry: I live at Morristown, New Jersey.

Mr. Untermeyer: Where is your place of business?

Mr. Henry: 25 Broad Street, New York City.

Mr. Untermeyer: What is your business?

Mr. Henry: I am a banker.

Mr. Untermeyer: Of what firm are you a member?

Mr. Henry: William Saloman & Company.

Mr. Untermeyer: You are a partner in that firm?

Mr. Henry: Yes, sir.

Mr. Untermeyer: How long have you been engaged in the banking business in New York?

Mr. Henry: I have been in the business ever since I came out of college, which was about twelve years ago.

Mr. Untermeyer: Are you a member of the New York Stock Exchange?

Mr. Henry: No, sir.

Mr. Untermeyer: Is any member of your firm a member of the Exchange?

Mr. Henry: Yes, one of my partners.

Mr. Untermeyer: Which one of your partners?

47 Mr. Henry: Mr. Stewart Waller.

Mr. Untermeyer: Was your firm concerned in the promotion and flotation of the California Petroleum Company?

Mr. Henry: I would not say we were engaged in its promotion. We bought some stocks from the men who did promote it.

Mr. Untermeyer: Did you buy stocks in conjunction with Lewisohn Brothers and Hallgarten & Company, incident to the organization of the company? Was it not all practically one transaction?

Mr. Henry: It was practically all one transaction, yes, sir.

Mr. Untermeyer: It amounted, in effect, to a promotion, did it not?

Mr. Henry: I should not think so.

Mr. Untermeyer: Well, let us see what happened. There was a company organized——

Mr. Henry: Just a moment, Mr. Untermeyer. We did not buy these stocks in conjunction with them. They bought them in conjunction with us.

Mr. Untermeyer: Oh. They bought them in conjunction with you, but you did not buy them in conjunction with them. I see.

48 Mr. Henry: It was our business.

Mr. Untermeyer: Well, having passed that bridge——

Mr. Henry: (Continuing). It was not their business.

Mr. Untermeyer: Let us see what happened. There was a company organized, was there not?

Mr. Henry: Yes, sir.

Mr. Untermeyer: At what time?

Mr. Henry: I shall have to refer to the dates.

Mr. Untermeyer: It was in September, 1912, was it not?

Mr. Henry: I do not believe I have the date of the incorporation here. It was in the latter part of September.

Mr. Untermeyer: In the latter part of September, 1912?

Mr. Henry: Yes.

Mr. Untermeyer: Under the laws of what State?

Mr. Henry: Virginia.

Mr. Untermeyer: It was a corporation organized under the Virginia law, to carry on business in California?

Mr. Henry: No. It was to hold the stocks of two California companies.

Mr. Untermeyer: Who organized that company? It was organized through what counsel?

Mr. Henry: It was done by Messrs. Kellogg, Emory, Boston and Cuthell, who were counsel for Doheny and Canfield.

49 Mr. Untermeyer: Who represented you?

Mr. Henry: (Continuing:) Their local counsel in Virginia was Mr. Williams' firm. I have forgotten the name of it: the firm of Mr. Randolph Williams.

Mr. Untermeyer: Was your firm at all represented in the organization of the company?

Mr. Henry: As to all the part of it with which we had anything to do, our counsel were Cravath, Henderson & de Gersdorff.

Mr. Untermeyer: There were several counsel for the interests in the company, who looked after the organization of the company?

Mr. Henry: That is right, sir.

Mr. Untermeyer: And you were represented in its organization through your counsel?

Mr. Henry: In so far as its organization affected us, we were.

Mr. Untermeyer: You were acquiring the stock as an incident to this incorporation or organization?

Mr. Henry: That is the way it worked out.

Mr. Untermeyer: Yes. So that you did have something to do with the promotion of the company?

Mr. Henry: Not directly.

50 Mr. Untermeyer: Well, let us see about that. What was the capital of this company?

Mr. Henry: It was organized with an authorized amount of fifteen million dollars preferred and seventeen and a half million dollars of common stock.

Mr. Untermeyer: How much of it was issued in conjunction with this negotiation to which you were a party?

Mr. Henry: I do not know whether my papers will show me that or not. I can tell you how much we bought.

Mr. Untermeyer: No, no. Just recognize the distinction, please, between the two propositions, Mr. Henry, if you will.

The question is: How much was issued to the vendors and how much was left in the treasury, if anything was left?

Mr. Henry: At the time of the original issue, there was an issue

to Doheny and Canfield of \$11,997,024 preferred stock, and \$13,-513,081 of common stock.

Mr. Untermeyer: Of which you and your associates undertook to purchase how much?

Mr. Henry: We purchased \$10,000,000 of preferred stock and \$7,572,845 of common stock.

Mr. Untermeyer: That entire transaction was conducted 51 and arranged at one time, was it not? That is, that the company should be organized, that its capital should be fixed at a given amount, and that you and your associates should acquire a given part of it?

Mr. Henry: It was all a part of the same deal.

Mr. Untermeyer: It was all a part of the same transaction?

Mr. Henry: Certainly.

Mr. Untermeyer: And, that being so, I understand you to say you had nothing to do with the promotion or organization of the company?

Mr. Henry: We had nothing to do directly with it. I think there is a very important distinction there, Mr. Untermeyer. We had nothing whatever to do with the promotion of the company. We bought stock from two men. We are not promoters.

Mr. Untermeyer: I understand, Mr. Henry, your hesitation at the suggestion that you are promoters.

Mr. Henry: Not necessarily.

Mr. Untermeyer: The question is not what you think you were, but what you did; and the contract would show that, would it not?

52 Mr. Henry: I think so.

Mr. Untermeyer: Have you got the contract here between Doheny and Canfield on the one part, and your firm on the other?

Mr. Henry: I have.

Mr. Untermeyer: Please produce it.

(The paper referred to was produced by the witness and thereupon marked "Exhibit No. 149, January 6, 1913.")

Mr. Untermeyer: This contract is between Doheny and Canfield and William Saloman & Company, dated the 16th of September, 1912.

You do not consider, Mr. Henry, that under the terms of that contract you and Doheny and Canfield together promoted the organization of this company in connection with the purchase by your firm of part of the securities of the company provided to be organized?

Mr. Henry: I do not know just what you are trying to get at, Mr. Untermeyer. What do you want me to admit?

Mr. Untermeyer: I do not want you to. I want you to answer the question.

Mr. Henry: The facts were these: Doheny and Canfield had two properties out in California, held by two different companies, 53 which they wanted to put together, and which they did put together; and after they had put those two properties to-

gether, although it was all done at the same time, we purchased some of the preferred stock and some of the common stock of the new company from them.

Mr. Untermeyer: Is it not a fact that it was not after they had put them together, but a part of the deal by which they put them together, that you were to buy the stock?

Mr. Henry: Certainly.

54 Mr. Untermeyer: And that you do not call being interested in the promotion?

Mr. Henry: I should not say that we were not interested in the promotion. I do not say that. I said we were not directly promoters in it.

Mr. Untermeyer: Were you not joint promoters with them?

Mr. Henry: I should not say so. I think we were interested in the promotion.

Mr. Untermeyer: I read from this exhibit No. 149. This is from Doheny & Canfield. (Reading:)

"SEPTEMBER 16, 1912.

Messrs. William Salomon & Company, New York City.

GENTLEMEN: "We hereby offer to sell and deliver to you for the sum of \$8,215,662 in cash, \$10,000,000 par value of the preferred stock, and \$7,572,845 par value of the common stock of the California Petroleum Corporation, a corporation to be organized under the laws of the State of Virginia, to which we shall make an offer in form and terms hereto annexed."

Have you the offer?

Mr. Henry: I have.

55 Mr. Untermeyer: Let me have it.

(The paper referred to was handed to counsel for the committee.)

Mr. Untermeyer (continuing reading):

"Delivery of temporary voting trust certificates for the common stock and temporary stock certificates in negotiable form shall be made at your office in the City of New York. The first payment shall be at least \$4,000,000, and shall be made as soon as the corporation is organized and the stock issued to us, which shall not be later than October 15, 1912; and the balance of the purchase price shall be paid from time to time thereafter at your convenience, provided that not less than \$2,000,000 thereof shall be paid within thirty days after the first payment, and the entire balance within sixty days after such first payment. Each payment after the first, shall be made with interest thereon from the date of the first payment at six per cent per annum. The amounts of stock of each class delivered at the time of each such payment shall be substantially in proportion to the principal of such payment.

"The common stock delivered to you is to be represented by voting trust certificates in form and terms satisfactory to you; the voting trustees to be E. L. Doheny, C. A. Canfield, and G. G. Henry,"—

56 Is that you?

Mr. Henry: Yes sir.

Mr. Untermeyer (continuing reading):

"With the right to each of the former to nominate the successor of the other and the right to William Salomon & Co. to nominate the successor of Henry; the voting trust to continue for five years.

"For the preferred and common stocks issued to us and not sold to you, we are to accept scrip of the company and the voting trustees respectively, exchangeable on or after October 1, 1913, but not before that date without your consent, for such stock and voting trust certificates.

"Provision shall be made in the charter or by-laws of the California Petroleum Corporation, or in such other manner as your counsel may approve, to the effect that the corporation shall have a finance committee of its Board, and that all its financial affairs shall be in the hands of such Finance Committee, and that such Finance Committee shall have the power to approve any action of the board relating to financial affairs before the same shall become effective. Such committee shall have a membership of three, two of whom are to be nominated by you and one by us."

57 That is, Salomon & Company were to have two out of the three members of the Finance Committee?

Mr. Henry: That is right.

Mr. Untermeyer: And yet you do not think you were a party to the promotion? And you were to be one of the voting trustees for the stock?

Mr. Henry: I was.

Mr. Untermeyer: Do you not think you would like to change your mind about that, Mr. Henry?

Mr. Henry: I have never said that we did not have anything to do with the promotion. I said we were not directly concerned about it; and I still do not think we were.

Mr. Untermeyer: Do you not think you were very directly concerned, under this agreement?

Mr. Henry: No sir; I do not—not directly.

Mr. Untermeyer: All right. (Continuing reading:)

"This arrangement as to membership shall only continue so long as any of the preferred stock shall remain outstanding, but not longer than the continuance of the voting trust.

"The undersigned will serve as directors and officers of the California Petroleum Corporation for three years from its organization, and will give its affairs such consideration and attention as its best interests may require.

58 "All matters of a legal character, including approval of titles, shall be subject to approval of your counsel."

That is, Salomon & Company's counsel?

Mr. Henry: Yes.

Mr. Untermeyer (continuing reading):

"The preferred stock of the California Petroleum Corporation,

and provisions for its protection, are described in schedules 'A' and 'B' annexed.

"Kindly indicate your acceptance of this offer within ten days from date, during which time we agree that it shall remain open in order that you may endeavor to form a syndicate.

Very truly yours,

E. L. DOHENY.  
C. A. CANFIELD."

Have you the acceptance?

Mr. Henry: I do not think I have that with me. It was very brief. It was just an acknowledgement of their letter.

Mr. Untermeyer: You were subpoenaed to produce that, were you not?

Mr. Henry: I do not know that I was. I may say, Mr. Untermeyer, that I prepared these papers about two weeks ago, when  
59 I came down here first.

Mr. Untermeyer: I call your attention, in connection with your statement that you did not know whether you were asked to produce the acceptance, to the third and fourth paragraphs of your subpoena?

Mr. Henry: I have it now.

Mr. Untermeyer: You find that you were asked to produce it, do you not?

Mr. Henry: If you tell me I was, I was.

Mr. Untermeyer: Is this the acceptance (referring to paper)?

Mr. Henry: That is the letter—the acknowledgement of that one of theirs.

Mr. Untermeyer: This is not the acceptance.

Mr. Henry: Here is the rest of it (handing papers to counsel).

Mr. Untermeyer: Yes. We will offer these as exhibits.

(The papers referred to were thereupon marked, respectively, exhibits Nos. 150 and 151.)

Mr. Untermeyer: Will you be good enough, Mr. Henry, to produce the various schedules that are referred to in the original offer?

(The witness produced the papers, which were thereupon  
60 offered in evidence and marked "Exhibits Nos. 152 and 153.)

Mr. Untermeyer: Does that complete it?

Mr. Henry: Yes.

Mr. Untermeyer: These are the documents referred to in exhibit No. 149.

(The exhibits last referred to will be found at the end of today's proceedings.)

The Chairman: The usual hour of adjournment having arrived, we will suspend until tomorrow morning at 11 o'clock.

(Whereupon, at 4:10 o'clock p. m., an adjournment was taken until tomorrow, January 7, 1913, at 11 o'clock a. m.)

61

(EXHIBIT No. 149.)

SEPTEMBER 16th, 1912.

Messrs. William Salomon &amp; Company, New York City.

GENTLEMEN: We hereby offer to sell and deliver to you for the sum of \$8,215,662 in cash, \$10,000,000, par value of the preferred stock and \$7,572,845 par value of the common stock of the California Petroleum Corporation, a corporation to be organized under the laws of the State of Virginia, to which we shall make an offer in form and terms hereto annexed.

Delivery of temporary voting trust certificates for the common stock and temporary preferred stock certificates in negotiable form, shall be made at your office in the City of New York. The first payment shall be at least \$4,000,000 and shall be made as soon as the Corporation is organized and the stock issued to us, which shall not be later than October 15th, 1912; and the balance of the purchase price shall be paid from time to time thereafter at your convenience provided that not less than \$2,000,000 thereof shall be paid within thirty days after the first payment and the entire balance within sixty days after such first payment. Each payment, after the first, shall be made with interest thereon from the date of the first payment at six per cent. per annum. The amounts of stock of

62 each class delivered at the time of each such payment, shall be substantially in proportion to the principal of such payment.

The common stock delivered to you is to be represented by voting trust certificates in form and terms satisfactory to you; the voting trustees to be E. L. Doheny, C. A. Canfield and G. G. Henry, with the right to each of the former to nominate the successor of the other and the right to William Salomon & Co. to nominate the successor of Henry; the voting trust to continue for five years.

For the preferred and common stocks issued to us and not sold to you we are to accept scrip of the Company and the Voting Trustees respectively, exchangeable on or after October 1, 1913 but not before that date without your consent, for such stock and voting trust certificates.

Provision shall be made in the charter or by-laws of the California Petroleum Corporation, or in such other manner as your counsel may approve, to the effect that the Corporation shall have a Finance Committee of its Board and that all its financial affairs shall be in the hands of such Finance Committee, and that such Finance Committee shall have the power to approve any action of the Board relating to financial affairs before the same shall become effective. Such Committee shall have a membership of three, two of whom are to be nominated by you and one by us. This arrangement as to membership shall only continue so long as any of the preferred stock shall remain outstanding but not longer than the continuance of the voting trust.

63 The undersigned will serve as directors and officers of the Cal-

ifornia Petroleum Corporation for three years from its organization and will give its affairs such consideration and attention as its best interests may require.

All matters of a legal character, including approval of titles, shall be subject to approval of your counsel.

The preferred stock of the California Petroleum Corporation, and provisions for its protection, are described in Schedule "A" and "B" annexed.

(Kindly.)

Kindly indicate your acceptance of this offer within ten days from date, during which time we agree that it shall remain open in order that you may endeavor to form a syndicate.

Very Truly yours,  
(Signed)  
(Signed)

E. L. DOHENY.  
C. A. CANFIELD.

64

(EXHIBIT No. 150.)

William Salomon & Co., Bankers, 25 Broad Street, New York.

SEPTEMBER 19, 1912.

Private.

California Petroleum Corporation.

Messrs. E. L. Doheny and C. A. Canfield, New York.

GENTLEMEN: We have your letter of September 16th. We are proceeding in the endeavor to form a syndicate, and shall inform you of our determination within the period of ten days fixed by your letter.

We beg to advise you that we are informed by Messrs. Salomon & Co., London, that the change contemplated in schedule "B" is agreeable to them, and therefore confirm that the modifications therein proposed are adopted.

Your very truly,

— — —

65

(EXHIBIT No. 151.)

William Salomon & Co., Bankers, 26 Broad Street, New York.

SEPTEMBER 25, 1912.

Private.

Messrs. E. L. Doheny and C. A. Canfield, New York.

DEAR SIR: Referring further to your letter of September 16th. offering to sell to us for the sum of \$8,215,662 in cash \$10,000,000 par value of the preferred stock and \$7,572,845 par value of the common stock of California Petroleum Corporation, we now beg to advise you that we have determined to accept said offer and agree to

purchase said stock at said price and upon the terms and conditions set forth in your letter.

Yours very truly,

H. S. (H.)

66 (EXHIBIT No. 152, JANUARY 6, 1913.)

Final.

9/17/12. D. E.

NEW YORK, September —, 1912.

To the Board of Directors of the California Petroleum Corporation.

GENTLEMEN: The undersigned own or control upwards of eighty per cent. of the capital stock of the American Petroleum Company and of the American Oilfields Company respectively, both of which are operating companies organized under the laws of the State of California having themselves interests in a number of subsidiary corporations. We shall probably acquire most if not all of the balance of the stock of both Companies. For the purpose of bringing into closer relations the management and operations of those two companies, we offer to sell and deliver to you all of such stock now owned or controlled by us or acquired by us within six months, on the basis of the issue to us or our order of \$12,500,000 par value, out of \$15,000,000 authorized of your preferred stock, and of \$15,000,000 par value, out of \$17,500,000 authorized of your common stock, for all of the outstanding preferred (20,959 shares)

67 and all of the common stock outstanding (124,684 shares) of the American Petroleum Company, together with all of the stock (183,038 shares) of the American Oilfields Company, the par value of all of said shares being \$100 each, together with the sum of \$2,200,000 in cash. As we can now deliver to you only eighty per cent of the stocks of the above Companies we propose to pay you cash in excess of the amount above stipulated, such excess cash to be returned to us accompanied by amounts of your stock, in the manner hereinafter set forth, if and as we from time to time make delivery to you of portions of the remaining twenty per cent. of the stocks of the above Companies; and we propose that deliveries and payments be not made pro rata, but in the following manner:

We to deliver to you at once upon the acceptance of this offer, the following:

80% of the outstanding preferred stock of the  
American Petroleum Company, or in all..... \$1,676,720  
par value;

80% of the common stock of the American Petro-  
leum Company, or in all..... 9,974,720  
par value;

68 80% of the stock of the American Oilfields  
Company, or in all..... 14,643,040  
par value;

Cash ..... 3,400,156.40

receiving in exchange therefor stock of your Company as follows:

Preferred stock, par value ..... \$11,997,024  
Common stock, par value ..... 13,513,081

We will at the same time in addition to the cash above specified pay to your Company in cash the amount of any and all dividends which at or before the date of such delivery shall have been actually paid or become payable, to others than your Corporation, upon the above specified shares of stock of the American Oilfields Company and the American Petroleum Company, subsequent to any dividends for the month of August, 1912 payable on or about October 1st, 1912<sup>1</sup> thereon.

The deliveries and payments hereinabove specified of and for said 80% of the stocks of said companies shall be absolute and unconditional, and neither party shall have any right to any rebate or repayment of or on account of the delivery or non-delivery of the remaining 20% of the stock of said companies, except as  
69 hereinafter expressly stated.

We shall not be liable for failure to secure said remaining 20%, but are to use our best efforts to do so and will deliver to you so much thereof as we obtain during six months from the date hereof, and you shall be firmly bound to receive the same as offered to you from time to time within said period and to deliver in exchange therefor to us or our order, stocks and cash as follows:

(a) For each share of preferred stock of the American Petroleum Company: \$20. par value of your preferred stock, \$75. par value of your common stock and \$40. in cash.

(b) For each share of the common stock of the American Petroleum Company: \$8 par value of your preferred stock, \$25 par value of your common stock, and \$37. in cash.

(c) For each share of stock of the American Oilfields Company: \$6 par value of your preferred stock, \$15 par value of your common stock and \$3 in cash.

By acceptance hereof your Company will agree (1) not to purchase, or contract or negotiate for the purchase, from others of any of said remaining stocks of the American Petroleum  
70 Company or the American Oilfields Company at any time within one year from the date hereof; (2) to purchase from us forthwith upon the acceptance of this offer \$1,000,000 par value of the outstanding bonds of the American Oilfields Company at the price of 80% of the face value thereof and accrued interest, which bonds we agree, if this offer is accepted, to sell and deliver to you at that price; (3) to purchase from us if tendered to you at any time or from time to time within six months from the date hereof, not exceeding \$323,000 face value additional of said bonds at said price of 80%, plus accrued interest; (4) not to purchase or contract or negotiate for the purchase from others of any of the

bonds of said issue at any time within one year from the date hereof.

In lien of preferred stock certificates deliverable to us pursuant hereto, you are to issue and we to accept scrip of your Company exchangeable on or after October 1, 1913 (but not before that date without the consent of the bankers to be designated by us), for such preferred stock certificates.

We hand you herewith report of Messrs. Price, Waterhouse & Co., dated —, upon the American Petroleum Company and the American Oilfields Company, also letter from Messrs. Price, 71 Waterhouse & Co., dated —, together with the reports of Dr. Ralph Arnold and of O'Melveny, dated respectively —, 1912 and —, 1912.

Yours truly,

(Signed)

(Signed)

C. A. C.

E. L. D.

72

# EXHIBIT No. 153.

## Schedule "A."

The preferred stock shall be entitled to a cumulative yearly dividend at the rate of 7% per annum from the date of the organization of the California Petroleum Corporation, payable quarterly, and each such quarterly dividend shall be paid or provided for before any dividend for that quarter shall be declared or paid upon or set apart for the common stock; and no dividend shall be paid or declared on the common stock in any fiscal year until all arrearages of dividends on the preferred stock have been paid and the full dividend on the preferred stock for the current quarter of such fiscal year shall have been paid or provided for.

The preferred stock shall also be entitled to participate pro rata with the common stock in all dividends declared in any year after dividends of 7% have been declared and set apart upon the common stock in such year.

The preferred stock shall also be entitled to priority in the payment of principal out of the assets of the Company over the common stock to its full par value, with all arrearages of dividends, and in the event of any voluntary liquidation of the Company caused otherwise than by bankruptcy or insolvency, it shall be entitled to receive 120% of its par value plus arrearages of dividends, before 73 any of the Company's assets are distributed to the holders of the common stock. After payment of the amounts hereinabove specified to the holders of the preferred stock they shall have no further share or portion of the Company's assets.

The preferred stock shall be redeemable, in whole or in part, at 120% of its par value and accrued dividends upon forty days' notice by mail or publication. The method in which such redemption shall be carried out shall be as provided by the by-laws from time to time, which shall conform to the requirements of the New York Stock Exchange.

For the purpose of creating a sinking fund for the purchase or redemption of the bonds of Subsidiary Companies or the preferred stock of this Corporation, there shall be set aside out of the net earnings of the Company remaining after the payment of full dividends with all arrearages thereon upon the preferred stock, and before the payment of any dividends upon the common stock, within thirty days after January 1st in each year beginning with the year 1915, an amount equal to five (5) cents for each barrel of petroleum sold by the California Petroleum Corporation or any Subsidiary Company during the preceding year, provided, however, that if the California Petroleum Corporation shall own less than all the outstanding stock of any Subsidiary Company, the sinking fund

74 upon that Company's sale shall be that proportion of five (5) cents which the amount of stock held bears to the total amount outstanding. The obligation to carry such amount to the preferred stock sinking fund shall be cumulative, so that if in any year the amount of the net earnings shall be insufficient to permit of the transfer to such fund of the full amount specified, or for any other reason such amount shall not be set aside and credited to the sinking fund, the deficiency shall be made good out of the net earnings of the next succeeding fiscal year or years before any dividend is set apart for or paid upon the common stock.

All moneys credited to the preferred stock sinking fund so created shall be applied as promptly as practicable, under suitable regulations to the purchase or redemption of the bonds of the Subsidiary Companies or preferred stock of the California Petroleum Corporation from time to time outstanding, provided that all such purchases shall be at the lowest price at which they can reasonably be obtained, not exceeding, however, in case of preferred stock, 120% of par and accrued dividends, or in case of the bonds, the redeemable price.

In case sufficient bonds or preferred stock to exhaust the moneys in the sinking fund shall not be purchased at or below said prices, the balance of the said moneys shall be applied to the redemption of said preferred stock at the redemption price

75 above named, and may be so applied together with other funds of the Company, whenever the Company shall determine to exercise its right of partial redemption.

The moneys in the sinking fund shall not be required to be actually withdrawn from the business of the Company until the actual application thereof to the purchase or redemption of bonds and shares of the preferred stock; but such moneys shall not be made the basis of a stock or cash dividend, or otherwise distributed among the holders of the common stock, nor shall said sinking fund be depleted, nor be used in any way which will interfere with the application thereof to the purchase or redemption of bonds and shares of the preferred stock as above provided.

Without the affirmative vote or written consent of at least three-fourths in amount of the preferred stock the corporation shall have no power; (1) to change, either by increase, diminution, or otherwise, the voting powers of either class of stock; (2) to sell or otherwise dispose of by conveyance, transfer, lease, mortgage, or other-

wise turn over the property, franchise and business of the corporation in their entirety or any stocks of American Oilfields or

76 American Petroleum Companies; (3) to create or to permit any subsidiary company to create, any mortgage or other lien upon its real or personal bonds under any present mortgage; (4) to create or issue any shares of stock which shall take priority over, or any additional shares of stock which shall be on a parity with, the said authorized \$15,000,000 of preferred stock; (5) to issue any of the additional authorized preferred stock over and above \$12,000,000 thereof, unless the net earnings of the company applicable to dividends on the preferred stock for the last preceding fiscal year or the last preceding twelve calendar months shall be equal to twice the annual dividends on the outstanding preferred stock, including the new preferred stock to be so issued.

The preferred stock shall have no voting power unless and until the Company shall fail to pay four quarterly dividends thereon, in which case and so long as there shall be any arrearages of dividends due and unpaid upon the preferred stock, the holders of the preferred stock voting as a class shall have the power to elect a majority of the Board of Directors of the Company, the remaining members of said board being elected by the holders of the common stock voting as a class.

(Signed)

C. A. C.

E. L. D.

77

#### SCHEDULE "B."

It is agreed that, subject to the approval by Salomon & Company of London, Schedule A and the letter to the Board of Directors of the California Petroleum Corporation hereto annexed, shall be amended as follows:

1. The amount of authorized preferred stock will be \$17,500,000 instead of \$15,000,000, of which \$2,500,000 can only be issued to acquire additional income producing oil properties.

2. No preferred stock in excess of \$12,500,000 shall be issued before October 1st, 1913, without the consent of William Salomon & Company, but otherwise no restrictions apply during this period except provision No. 1 above.

3. It is understood that the preferred stock will, participate equally with the common in any dividends in excess of seven per cent. declared on the common during any fiscal year without reference to the fact that the common may not have received seven per cent. cumulative from the organization of the Company.

4. It is understood that the Company is to have the right to pay common stock dividends partly in cash and partly in stock without the preferred stockholders having the right to require that any part of such common stock issue should be distributed to them unless the aggregate of cash and stock dividends upon the common stock in any fiscal year exceeds seven per cent., in which

78

event that part of the dividend paid in stock shall be regarded as the excess dividend.

(Signed)

E. L. D.

(Signed)

C. A. C.

*Money Trust Investigation.*

Subcommittee of the Committee on Banking and Currency.

HOUSE OF REPRESENTATIVES,

WASHINGTON, D. C., TUESDAY, *January 7, 1913.*

The subcommittee met at 11 o'clock a. m.

Present: Messrs. Pujo (Chairman), Heald, Stephens, Hayes and Guernsey.

Present also: Samuel Untermyer, Esq., of New York City, counsel for the committee and G. Carroll Todd, Esq., assistant counsel for the committee.

The Chairman: The committee will now come to order and the testimony will be resumed.

*Testimony of Mr. G. G. Henry (Continued).*

Mr. Untermyer: After entering into this agreement with Doheny & Canfield, which you have produced here, did you or your firm of William Salomon & Company make any agreement with Hallgarten & Company or Lewisohn Brothers, or either of them, in writing?

Mr. Henry: We wrote a letter to Lewisohn Brothers. Whether we did to Hallgarten or not I could not say. I think we did, and the letter was sent back, for certain changes. After that I do not think we ever confirmed that in writing, with them.

Mr. Untermyer: You were subpoenaed to produce all the documents bearing on this transaction. Have you looked to ascertain whether you have any agreement, by letter or otherwise, with the gentlemen or firms with whom you were associated in this enterprise?

Mr. Henry: Mr. Lewisohn produced that himself, Mr. Untermyer. You have already the documents that relate to our contract with them, as I understand it.

Mr. Untermyer: The letter written to Messrs. Lewisohn, giving them a participation, is the only writing that there was between you, was it?

Mr. Henry: I do not know which participation you refer to, Mr. Untermyer. There were two.

Mr. Untermyer: In the California Petroleum Company.

Mr. Henry: There was one in the syndicate and one in the original banking group. Messrs. Lewisohn Brothers got two letters from us, one to participate in the original banking group and the other to participate in the syndicate.

Mr. Untermyer: Those two letters constitute the only writings between you?

Mr. Henry: Yes.

Mr. Untermeyer: There was no formal contract?

Mr. Henry: No; nothing except the exchange of letters.

Mr. Untermeyer: With respect to the participation of Hallgarten & Company, was there any writing whatever?

Mr. Henry: My impression about that is that we wrote a letter to them and, because of certain changes in their firm that were taking place at that time, they held the letter over until after a certain time.

Mr. Untermeyer: There has been no letter——

Mr. Henry: To participate, no; I think not. I am testifying from memory there, but I do not think our files have any record of any contract between ourselves and Hallgarten. It was all done as a matter of word of mouth—orally.

Mr. Untermeyer: What was the arrangement, then, with respect to the participation of these other firms in this California Petroleum transaction?

Mr. Henry: It was handled in this way. We made the contract with Doheny & Canfield.

Mr. Untermeyer: What was their participation? What  
83 interest did they acquire?

Mr. Henry: There was one firm whose name has not been mentioned that had a participation of 12½ per cent.

Mr. Untermeyer: Who was that?

Mr. Henry: I do not want to say.

Mr. Untermeyer: Why should you refuse to state who your partners were in this enterprise?

Mr. Henry: Because we told them, at the time, that their names would not appear publicly.

Mr. Untermeyer: What is that?

Mr. Henry: Because we told them at the time that their names would not appear publicly in the transaction. It is a matter of more or less common knowledge, I think, as to who the house was, but their name was not to appear publicly, and I do not feel at liberty to disclose it.

Mr. Untermeyer: If it is a matter of common knowledge, and they were your partners in this enterprise, have you any reason for not stating who your partners were, other than that you had told them that you would not disclose their names?

Mr. Henry: No; I have no other reason. We are not ashamed of them, and I do not think they are ashamed of us.

Mr. Untermeyer: Then there is no reason why you should  
84 not tell us?

Mr. Henry: Except that it is a matter—and it is a very common matter, as you know, in Wall Street, Mr. Untermeyer—where certain people have assumed public responsibility for a deal, and others have not; others having a silent participation in the transaction, where their name does not appear. That was this case.

Mr. Untermeyer: They were willing to take a profit, but they were not willing to assume responsibility for the integrity and merits of the enterprise? Is that what you mean?

Mr. Henry: I did not imply that, no. They did not know very much about it. They took an interest from us, because we told them it was a good thing. They were glad to take it, and wanted more, as a matter of fact.

Mr. Untermyer: Is that a corporation or a partnership?

Mr. Henry: It is a partnership.

Mr. Untermyer: Have you asked their permission to disclose their names, since this transaction has come before the committee?

Mr. Henry: I have not.

Mr. Untermyer: Have you any reason to believe that they would withhold their consent to your making the disclosure?

85 Mr. Henry: I do not think so. I have no reason to suppose they would.

Mr. Untermyer: We will pass that for a moment. We will come back to that again, later.

What participation did Lewisohn Brothers and Hallgarten & Company have in the transaction?

Mr. Henry: After taking out  $12\frac{1}{2}$  per cent for this firm I have just spoken of, Hallgarten & Company and Lewisohn Brothers and ourselves divided the balance of the stock, which gave us each an interest of  $29\frac{1}{66}$  per cent in it. Then we charged Lewisohn Brothers, and we also charged the other house that had the  $12\frac{1}{2}$  per cent, ten per cent of their profits, because of our originating the business. We made Hallgarten no such charge, because they assumed the management of the syndicate with us.

Mr. Untermyer: On the other hand, did Lewisohn Brothers make a charge for managing the Stock Exchange end of the thing?

Mr. Henry: No sir; nothing except the ordinary minimum commission.

Mr. Untermyer: They charged commissions?

Mr. Henry: You have to do that, according to the rules of the New York Stock Exchange.

86 Mr. Untermyer: That is not what I asked you. The *The* fact is that Lewisohn Brothers did charge for their services in looking after the Stock Exchange end of the transaction?

Mr. Henry: They charged the minimum commission,—I think one thirty-second of one per cent.

87 Mr. Untermyer: You mean the minimum commission chargeable in transactions between stock exchange houses?

Mr. Henry: Yes.

Mr. Untermyer: And you were all stock exchange houses?

Mr. Henry: I think so, yes sir. I do not know whether the other two are members of the Exchange or not; I really do not know whether Hallgarten & Company are members of the Exchange or not. I think they are.

Mr. Untermyer: Having entered into this arrangement for the acquisition of this \$10,000,000 of preferred stock and \$7,500,000, I think it was——

Mr. Henry: Approximately.

Mr. Untermyer: Of common stock in the California Petroleum

Company, what did you gentlemen next do with respect to marketing the securities that you had so bought?

Mr. Henry: Well, there were a good many operations that took place all simultaneously. I might take them up in logical order, although they do not necessarily rank that way chronologically. The first thing we did was to form two syndicates, or rather one in this country and sell to a foreign syndicate a certain amount of stock. We formed a syndicate in this country to take \$5,000,000 of preferred and \$2,500,000 of common for \$5,000,000 plus the accrued dividend on the preferred stock, and we also sold to  
88 a London syndicate the same amount, \$5,000,000 of preferred and \$2,500,000 of common, for \$5,000,000 plus the accrued dividend on the preferred.

Mr. Untermeyer: Having formed those two syndicates, that left you and your associates with a cash profit and a stock profit on the transaction from the original purchase of how much up to this point?

Mr. Henry: \$1,784,338 in cash.

Mr. Untermeyer: And how much stock?

Mr. Henry: 25,729 shares of common stock.

Mr. Untermeyer: That is 2,000,000—

Mr. Henry: \$2,572,846.

Mr. Untermeyer: Did you and your associates also become members of these sub-syndicates or either of them?

Mr. Henry: We did in the New York syndicate.

Mr. Untermeyer: And that syndicate was made up of how many people, the New York syndicate of \$5,000,000 preferred and \$2,500,000 common stock for \$5,000,000?

Mr. Henry: There were 103 participants in that syndicate.

Mr. Untermeyer: 103?

Mr. Henry: Not counting ourselves; 104 counting ourselves.  
89

Mr. Untermeyer: How many of them were corporations?

Mr. Henry: There were three corporations; and there may have been some incorporated firms. A great many banking firms as you know, are incorporated. Whether some of these firms as we know them, dealers in securities, are incorporated or not I do not know, but I take it you mean how many institutions. There were three institutions.

Mr. Untermeyer: There were three banking institutions?

Mr. Henry: There were three banking institutions.

Mr. Untermeyer: In the City of New York?

Mr. Henry: No sir.

Mr. Untermeyer: There were none of them in the City of New York?

Mr. Henry: There were two in New York and one outside.

Mr. Untermeyer: Were there officers of National banks in the syndicate?

Mr. Henry: There were.

Mr. Untermeyer: How many officers of national banks were there in this \$5,000,000 syndicate?

Mr. Henry: There were fifteen officers of seven national banks, of which four were in the city of New York and three outside, and they had a total interest—

Mr. Untermeyer: You mean four banks were in the city  
90 and three outside?

Mr. Henry: Yes sir.

Mr. Untermeyer: In what cities were the other banks?

Mr. Henry: They were in Chicago and Detroit, I think; two in Chicago and one in Detroit, as I remember it.

Mr. Untermeyer: Were there any officers of banks or trust companies in New York City other than national banks, and if so, how many officers of other banks and trust companies were members of that syndicate?

Mr. Henry: Just in New York City?

Mr. Untermeyer: Yes.

Mr. Henry: I have not got it separated here. There were six officers in four trust companies.

Mr. Untermeyer: Six officers in four trust companies, altogether?

Mr. Henry: Yes; of which three trust companies were in New York and one outside, one in Chicago. There were three officers of state banks outside of New York.

Mr. Untermeyer: What were the total participations for syndicate underwritings of the three banking institutions in New York City?

Mr. Henry: I did not say there were three banking institutions in New York.

Mr. Untermeyer: I think you said there were two in New  
91 York and one outside, did you not?

Mr. Henry: Yes sir.

Mr. Untermeyer: What was the total participation of those three institutions?

Mr. Henry: The two in New York had \$550,000.

Mr. Untermeyer: Did one of them have \$500,000?

Mr. Henry: Yes. One of them had \$500,000.

Mr. Untermeyer: And the one outside had how much participation in the syndicate?

Mr. Henry: I am testifying from memory, Mr. Untermeyer. I believe it was \$50,000.

Mr. Untermeyer: What participations did the trust companies in New York have?

Mr. Henry: There was only one trust company, which had a participation of \$50,000.

Mr. Untermeyer: Did the officers of that trust company have a participation?

Mr. Henry: No sir.

Mr. Untermeyer: What banks—were there banks in New York that had a participation?

Mr. Henry: No banks at all.

Mr. Untermeyer: How about the participation of the national bank that was outside of New York City, and the other banks  
92 and trust companies outside? What did they amount to?

Mr. Henry: I did not say that any bank outside of New York City had a participation.

Mr. Untermeyer: I thought you said one banking institution outside of New York had a participation.

Mr. Henry: It is not a bank, it is a corporation, it is an institution.

Mr. Untermeyer: It is a security company attached to a bank in Chicago.

Mr. Henry: I did not say it was in Chicago.

Mr. Untermeyer: I ask you.

Mr. Henry: No, it is not in Chicago.

Mr. Untermeyer: Well, it is a security company attached to a bank, I think you said in Detroit.

Mr. Henry: No, I did not say Detroit.

Mr. Untermeyer: Regardless of where it is, is it a security company attached to a bank after the fashion of the First Security and the First National?

Mr. Henry: I know really very little about the relations between this corporation and the bank, to which, as you guess, it is attached. It has some kind of connection, but I do not know much about it. I really do not know enough about it to testify.

Mr. Untermeyer: Well, you know the name of it, do you not?

Mr. Henry: Yes; I know the name of it.

Mr. Untermeyer: Is it a security company?

Mr. Henry: I do not know just what you mean by a security company.

Mr. Untermeyer: Has it the name of Security company?

Mr. Henry: No, it has not.

Mr. Untermeyer: It has not?

Mr. Henry: No.

Mr. Untermeyer: Have you stated all the participations of banking institutions in this syndicate, that is the amounts?

Mr. Henry: I think so.

Mr. Untermeyer: And what do they amount to in all, banking participations, of banking institutions in this syndicate?

Mr. Henry: You mean just the institutions themselves?

Mr. Untermeyer: Yes. I am not speaking of the officers now.

Mr. Henry: I understand. \$600,000.

Mr. Untermeyer: What?

Mr. Henry: \$600,000.

Mr. Untermeyer: Give me the aggregate number of officers of banking institutions to whom you gave participations in this syndicate.

Mr. Henry: Twenty four.

Mr. Untermeyer: Twenty-four bank officers?

Mr. Henry: Yes sir.

Mr. Untermeyer: Of whom how many were in the City of New York?

Mr. Henry: I have not got that here. I can guess at that if you want.

Mr. Untermeyer: No, I think we would rather not have you guess. You know who they are, do you not?

Mr. Henry: I know who they are.

Mr. Untermyer: Yes. Suppose you just tell us how many are in New York connected with New York banks, that were also members of the syndicate.

Mr. Henry: I have not got that list with me here. I have not the list of the syndicate here.

Mr. Untermyer: Were there banking officers and officers of trust companies to whom your firm gave participations in this syndicate whose banks or banking institutions were not underwriters.

Mr. Henry: Will you repeat that question?

(The question was repeated by the stenographer as above recorded.)

Mr. Henry: There were, yes sir.

95 Mr. Untermyer: Have you any means of separating the number of bank officers to whom you gave participations, whose banks and banking institutions were not underwriters, and the number of banking officers whose institutions were underwriters?

Mr. Henry: I have not any way of doing that accurately here, no.

Mr. Untermyer: I will ask you again to tell the committee the number of officers of banks in the City of New York who were underwriters in this syndicate.

Mr. Henry: I have not the information here that will enable me to answer that question, Mr. Untermyer.

Mr. Untermyer: Will you read the question again.

(The question was read by the stenographer as above recorded.)

Mr. Henry: I have only got a total here covering New York and outside. I am not seeking to keep back anything; I am just not able to state accurately. I should guess possibly there were twenty-four, two-thirds inside the city and one-third outside.

Mr. Untermyer: Sixteen in New York and the others in Chicago and Detroit.

Mr. Henry: That is my idea, and elsewhere.

Mr. Untermyer: What other cities.

96 Mr. Henry: Milwaukee.

Mr. Untermyer: You will furnish us that information, will you not?

Mr. Henry: You mean the exact number?

Mr. Untermyer: Yes, the exact number.

Mr. Henry: I see no objection to that.

Mr. Untermyer: Will you furnish it tomorrow? Will you send it to the committee?

Mr. Henry: I think I can furnish it today if you want it.

Mr. Untermyer: Yes; if you will. Where will you get the data from which to furnish it today?

Mr. Henry: Telephone to my office.

Mr. Untermyer: What was the total amount of underwriting participations that your firm gave to these bank officers?

Mr. Henry: \$535,000.

Mr. Untermyer: Divided between the 24 officers?

Mr. Henry: Yes.

Mr. Untermeyer: What was the largest amount to any one of them?

Mr. Henry: \$50,000, I think.

Mr. Untermeyer: Was that to a New York officer?

Mr. Henry: Yes.

97 Mr. Untermeyer: To a man who is an officer of a New York national bank?

Mr. Henry: Yes.

Mr. Untermeyer: Was that participation given to the officer of the institution in New York that underwrote \$500,000?

Mr. Henry: No sir.

Mr. Untermeyer: Was it given to an officer of an institution that did any of the underwriting?

Mr. Henry: No sir; that institution did not do any underwriting.

Mr. Untermeyer: The officer did not?

Mr. Henry: No.

Mr. Untermeyer: Was that a national bank?

Mr. Henry: That is a national bank.

Mr. Untermeyer: And one of our largest national banks, is it not?

Mr. Henry: Well, large is a relative term, Mr. Untermeyer.

Mr. Untermeyer: Well, was it a national bank with resources of over \$100,000,000.

Mr. Henry: I do not know what their resources are.

Mr. Untermeyer: Can you give us any idea.

98 Mr. Henry: It is a big bank. All the Wall Street banks are big banks.

Mr. Untermeyer: It was a Wall Street bank, was it?

Mr. Henry: It was a Wall Street bank.

Mr. Untermeyer: A Wall Street bank that loans on collateral.

Mr. Henry: Surely it loans on collateral.

Mr. Untermeyer: It loans money on the Stock Exchange?

Mr. Henry: I do not know whether it does or not.

Mr. Untermeyer: You do not know whether this bank is a lender on the Stock Exchange.

Mr. Henry: I do not know whether it is directly.

Mr. Untermeyer: Sir.

Mr. Henry: I do not know whether it loans money directly on the Stock Exchange.

Mr. Untermeyer: You know the business of lending money on the Stock Exchange, do you not?

Mr. Henry: Something about it.

Mr. Untermeyer: You know that the large lenders of money among the banks on the Stock Exchange are numerous?

Mr. Henry: A great many I understand loan privately over the telephone.

Mr. Untermeyer: They loan to stock brokers over the telephone and on the Board?

99 Mr. Henry: Yes.

Mr. Untermeyer: You do not know whether this bank is a lender on the Stock Exchange?

Mr. Henry: It loans lots of money, I do not know whether it loans its money on the board or privately over the telephone.

Mr. Untermeyer: You do not know but what it loans it at the loan stand on the Stock Exchange?

Mr. Henry: No.

Mr. Untermeyer: Then as I understand it you allowed participation in this underwriting syndicate to banking institutions and officers of banks together amounting to about \$1,100,000 of the \$10,000,000, the total underwriting?

Mr. Henry: I should say \$1,085,000.

Mr. Untermeyer: Is it a usual thing, Mr. Henry, in transactions of this kind, to give participations to officers of national banks and trust companies in New York and elsewhere?

Mr. Henry: I think so. We have on our syndicate list—this list was made up in our office from our regular syndicate lists, just as all of our syndicates are made up, and we have on our lists officers and directors of all kinds of financial institutions. They are usually prominent and influential people whom one wants to have associated with him in matters of this kind.

Mr. Untermeyer: When you say you have on your syndicate list the names of certain officers of national banks, do you mean by that that you keep a list of men to whom you offer participation in your syndicates?

Mr. Henry: We keep three such lists in our office.

Mr. Untermeyer: How do you divide them?

Mr. Henry: How do you mean?

Mr. Untermeyer: You say there are three such lists. Do you mean some for a small issue, and some for a larger issue?

Mr. Henry: Yes; divided partly as to size, and partly as to the character of the business.

Mr. Untermeyer: And on all those lists you have the names of officers of the national banks and other banking institutions as people to whom you offer participations in your syndicates?

Mr. Henry: I think that bank officers and trust company men and so on are on all these lists. I am not sure, but I think so.

Mr. Untermeyer: You also have the banks and trust companies themselves on the lists?

101 Mr. Henry: Yes.

Mr. Untermeyer: So that it is not unusual, is it, in forming your syndicates, to give participation to a national bank, or to give participations to the officers of that bank?

Mr. Henry: Sometimes they are in on the same syndicates and sometimes in different syndicates.

Mr. Untermeyer: But it is not unusual to give the officers and the banks participations?

Mr. Henry: No, not unusual.

Mr. Untermeyer: And you do not think there is anything improper in it?

Mr. Henry: If we did, we would not do it.

Mr. Untermeyer: I say you do not think so?

Mr. Henry: No.

Mr. Untermeyer: But you do not want to disclose the names of the banks or officers concerned in the transaction, do you?

Mr. Henry: I do not think it is honorable, Mr. Untermeyer, for me to give up the names of our participants.

Mr. Untermeyer: Then I say, you do not want to do it.

Mr. Henry: No.

Mr. Untermeyer: Have you asked their permission?

102 Mr. Henry: No.

Mr. Untermeyer: You have known that question would be presented to you?

Mr. Henry: Yes.

Mr. Untermeyer: And have been so informed.

Mr. Henry: Yes.

Mr. Untermeyer: And if there is nothing dishonorable or improper in the fact of officers of national banks participating in the syndicate, in securities that are to be listed on the Exchange, and on which banks are to loan money, why do you hesitate to state their names?

Mr. Henry: Because the relations between the banker and his client, while they are not perhaps perfect privileged relations, such as those that exist between a lawyer and his client, or the doctor and his patient, are nevertheless confidential, and it is recognized by all honorable and decent business men that they should not tell the names of their customers unless compelled to do so.

Mr. Untermeyer: Would that apply to a national bank?

Mr. Henry: Yes sir.

Mr. Untermeyer: You do not think there is anything private about their affairs, do you, the syndicates in which they participate?

103 Mr. Henry: I think it is a distinctly private matter between ourselves and the officers of a national bank, which is a member of one of our syndicates.

Mr. Untermeyer: What about the bank itself? Do you think its participation in the syndicate should be regarded as a secret?

Mr. Henry: So far as we are concerned it is one of our customers.

Mr. Untermeyer: I say do you think it is to be regarded as a secret?

Mr. Henry: It is not for me to tell it.

Mr. Untermeyer: Do you think you should regard it as a secret?

Mr. Henry: So far as my customer is concerned.

Mr. Untermeyer: So far as the national bank is concerned.

Mr. Henry: If the bank is one of my customers, yes, I think we ought to keep quiet about it, of course.

Mr. Untermeyer: You think you should not disclose the fact or the name of the national bank that is a participant in one of your syndicates?

Mr. Henry: I certainly do.

Mr. Untermeyer: You think you should maintain secrecy with respect to the officers of the national bank which takes a participation in a syndicate for the marketing of stock on the Stock Exchange, on which his bank may be called on to lend money.

104 Mr. Henry: I certainly do.

Mr. Untermeyer: Now, let us get a little farther with this transaction and see what its final result was. You say you formed this \$5,000,000 syndicate, \$5,000,000 of preferred stock and \$2,500,000 of common stock for \$5,000,000?

Mr. Henry: Plus the accrued interest.

Mr. Untermeyer: Well, \$5,000,000 and interest on the preferred stock?

Mr. Henry: Yes.

Mr. Untermeyer: The accruing dividend?

Mr. Henry: Yes.

Mr. Untermeyer: Who marketed those securities in that sub-syndicate of \$5,000,000? Were they marketed?

Mr. Henry: They were all marketed before the syndicate was formed, practically.

Mr. Untermeyer: I did not ask you that. Were those securities marketed?

Mr. Henry: Yes. They were marketed.

Mr. Untermeyer: How?

Mr. Henry: By Salomon & Company, Hallgarten & Company, and Lewishohn Brothers.

Mr. Untermeyer: You say you sold that \$5,000,000 of preferred stock and \$2,500,000 of common stock before you formed that syndicate?

Mr. Henry: No; but before we confirmed the syndicate participations practically all the syndicate stock was sold.

Mr. Untermeyer: As I understand you, before you notified your syndicate underwriters that they could have participation in the syndicate, you had already disposed of the syndicate stock for them, had you not?

Mr. Henry: No, sir, not before we notified them they could have a participation. What we did was to offer them a participation and before we got in their replies in most cases the stock was all sold.

Mr. Untermeyer: Then, as I understand you, before they agreed to take—

Mr. Henry: Yes; that is it.

Mr. Untermeyer: Before they agreed to take stock in your syndicate you had already sold it at a profit?

Mr. Henry: That is it.

Mr. Untermeyer: And at how large a profit?

Mr. Henry: Well, it worked out—

Mr. Untermeyer: Eleven points, did it not?

Mr. Henry: No; about nine and a fraction. 9.8 per cent.

106 Mr. Untermeyer: That was the profit you realized on that syndicate before the people to whom you offered participation had accepted it?

Mr. Henry: Well, the whole profit.

Mr. Untermeyer: How much did that amount to, \$450,000?

Mr. Henry: In that neighborhood, yes; nearly \$500,000.

Mr. Untermeyer: Nearly \$500,000 profit, and these bank officers then had a fixed profit of over \$50,000 before they were called on to accept their allotments?

Mr. Henry: Approximately \$50,000?

Mr. Untermeyer: So that in effect what they got was a present, was it not?

Mr. Henry: It was, this time.

Mr. Untermeyer: Yes it was a present.

Mr. Henry: They do not always go that way.

Mr. Untermeyer: No, I would like my questions answered, if you will answer them.

Mr. Henry: I beg your pardon.

Mr. Untermeyer: Do you think it a proper thing to put bank officers in the position or have them to put themselves in a position in which they get a large profit on a transaction where they have not even got a legal commitment?

Mr. Henry: They were perfectly ready to take it.

107 Mr. Untermeyer: I did not ask you that. Won't you answer that question?

Mr. Henry: I think it was in this case, because they did not know whether they had to make the commitment or not. They did not know we were going to sell the stock so quickly.

Mr. Untermeyer: Let us see about that. I understood you to say before they were called upon to say whether they would take a participation or would not you had already realized this profit? Is not that right?

Mr. Henry: I—

Mr. Untermeyer: Won't you answer that question?

Mr. Henry: I cannot answer it unless you will allow me to explain exactly how it was. I said this. Before we got replies from a great many of them we had already sold most of the stock. I cannot make a hard and fast statement that we had sold it all, but we sold it all before we heard from many of them.

Mr. Untermeyer: Don't you know that is what you have said?

Mr. Henry: No, I do not think I ever did say that.

Mr. Untermeyer: Very well.

Mr. Henry: I want to be very specific about this, because I do not want to give a wrong impression here, that is all.

108 Mr. Untermeyer: Then you do not understand that you told us that before you had any of the commitments from the syndicate underwriters you had already realized your profit?

Mr. Henry: Practically all of it, so we did, but I think I always said practically. If I did not, I want to put it in now, because I do not know the exact date we received these letters in reply from the last underwriters. When you send out a lot of syndicate letters you will get a lot of replies, and some men will answer more quickly than others. Some man may have sent in his reply the very same day; and in that case before we sold the stock he was committed. Those who did not reply were not committed, because the stock had been sold before we got their reply.

Mr. Untermeyer: Have you here the notice you sent out advising the syndicate underwriters that the syndicate stock had been sold?

Mr. Henry: Yes.

Mr. Untermeyer: Will you please produce it. Will you at the same time produce the notice of allotment to the underwriters?

Mr. Henry: Yes (producing papers). That is September 21st, that is the letter we sent out offering participation and that 108½ is the letter of September 24th stating the agreement, and this is the letter of October 21st, sending the checks for the profits.

Mr. Untermeyer: Will you please mark these, the letters of September 21st and 24th, 1912, and of October 21st, 1912.

(The letters referred to were these upon marked respectively Exhibits Nos. 160, 161, and 162.)

109 Mr. Untermeyer: The syndicate underwriters never paid anything, did they?

Mr. Henry: No, sir.

Mr. Untermeyer: They did not put up a cent?

Mr. Henry: They never put up a cent.

Mr. Untermeyer: No. And they never had possession of any stock, did they?

Mr. Henry: No, sir. That is, the individuals did not. The syndicate did.

Mr. Untermeyer: You mean the syndicate managers, Saloman & Company, did?

Mr. Henry: No; I mean that we kept a record of the syndicate books in our office, and we delivered the stock to the syndicate and sold it out for the syndicate. They were never asked to put up any money, but the stock went through the syndicate's account.

Mr. Untermeyer: Did you ever deliver to any of the syndicate participants any of the certificates of stock?

Mr. Henry: No, sir.

Mr. Untermeyer: Those were all sold by you, were they not?

Mr. Henry: Yes. They were sold the same day that they 110 were bought. They went right through the books in one day.

Mr. Untermeyer: You mean the same day that they were bought by this \$5,000,000 syndicate, they were sold again?

Mr. Henry: They were all sold on the day they were sold to the syndicate so that they went out of the syndicate account the same day that they went into the syndicate account.

Mr. Untermeyer: But the market certificate of the stock remained with you?

Mr. Henry: I do not know that I quite follow that, as to just what you mean, Mr. Untermeyer.

Mr. Untermeyer: The syndicate underwriters never received any of the certificates of stock?

Mr. Henry: No, because the stock had already been sold.

Mr. Untermeyer: I understand. It was sold the same day that it was bought. It was sold to another syndicate.

Mr. Henry: Please do not confuse this, Mr. Untermeyer. When you have a new security, you know you have a certain delivery day.

Mr. Untermeyer: I understand that.

Mr. Henry: (Continuing.) And I think our delivery day was

October 2nd. I can look that up and find out just what it was. I think, however, that it was October 2nd.

111 On October 2nd we debited the syndicate account with that purchase, and credited them with the various sales that were made for the syndicate account. We did not retain any stock. It was sold to the customers, and delivered to those who bought it.

Mr. Untermeyer: This stock was sold to another syndicate, was it not?

Mr. Henry: No, sir.

Mr. Untermeyer: It was not they did not sell it to another syndicate?

Mr. Henry: No, sir.

Mr. Untermeyer: It was sold to individual people?

Mr. Henry: It was sold to individual customers.

Mr. Untermeyer: Some of whom were members of the syndicate, and some of whom were not?

Mr. Henry: Yes. Some of the syndicate subscribers were very angry because they did not have an opportunity to buy.

Mr. Untermeyer: Did you understand the question? Some of the people to whom you sold were members of the syndicate?

Mr. Henry: A very few of them; yes.

Mr. Untermeyer: Did any of the bank officers become purchasers of any of that stock?

Mr. Henry: Not that I remember.

Mr. Untermeyer: All they did was to take their profits from it?

Mr. Henry: That was all.

Mr. Untermeyer: None of them ever saw the stock, did they?

Mr. Henry: You mean none of them ever saw the certificates?

Mr. Untermeyer: Yes.

Mr. Henry: I do not think so.

Mr. Untermeyer: And none of them ever put up any money?

Mr. Henry: Nor ever put up any money; none of the syndicate did; not only the bank officers, but none of the whole syndicate.

Mr. Untermeyer (interposing): Yes; I understand. What became of the European syndicate?

Mr. Henry: I do not know very much about that. We sold the preferred and common stock to them, and they paid for it. That is really about all we know of it. They applied for listing the stock in Paris, and they have got it on the Bourse now, in Paris. They have got a syndicate that is going, over there, now, as far as I know.

113 Mr. Untermeyer: But you are not interested in that?

Mr. Henry: We are not interested in that.

Mr. Untermeyer: Having now bought this \$10,000,000 of preferred and \$7,500,000 of common for eight million odd dollars, and having sold it to the two syndicates in the way you have described, did you engage with Messrs. Lewisohn Brothers and Hallgarten & Company in a market operation in this stock on the New York Stock Exchange?

Mr. Henry: No, we have sold——

Mr. Untermeyer: I say, did you engage in such an operation, Mr. Henry?

Mr. Henry: Will you not let me tell it in my own way, Mr. Untermeyer? I can give a much fairer picture of it if you will allow me to do so.

Mr. Untermeyer: If it does not take too long. It is a very simple question—to know whether you engaged in a market operation or did not.

Mr. Henry: After we had sold our own stock—we sold all of our own stock before the stock was listed; I want to make that very plain, because the testimony given here in this same case, before, did not give it right.—

Mr. Untermeyer: Now, Mr. Henry, you are not answering my question. We might go on all day in this way. I will ask you to answer my question.

113½ Did you engage with Lewisohn Brothers and Hallgarten & Company in a market operation in the California Petroleum stock, at about this time?

Mr. Henry: After the stock was listed on the Stock Exchange—because we made no market in it up to that time—after the stock was listed on the Stock Exchange we made a market in the stock, and we have ever since—

Mr. Untermeyer: When was it listed?

Mr. Henry: It was listed on Saturday, the 5th of October.

Mr. Untermeyer: Who prepared the application for listing?

Mr. Henry: The vice-president and the treasurer of the company, in conjunction with the statistician of our office, whose help was engaged because he knew the machinery to go through, and they did not.

Mr. Untermeyer: Between the 5th of October, when the stock was listed on the Exchange, and the end of October, who conducted that market operation on behalf of your firm and Hallgarten and Lewisohn Brothers?

Mr. Henry: Lewisohn Brothers.

Mr. Untermeyer: For the joint account?

114 Mr. Henry: For the account of the original banking group. Mr. Untermeyer: Was it for the joint account of those three houses, or was it not? That was the question.

Mr. Henry: No; because the other house that had an interest of twelve and a half per cent, was still in it.

Mr. Untermeyer: It was for the joint account of the four?

Mr. Henry: The original purchasing group; yes, sir.

Mr. Untermeyer: What stock did Lewisohn Brothers have to market?

Mr. Henry: They did not have any stock to market.

Mr. Untermeyer: They had none of your stock, had they?

Mr. Henry: All the syndicate stock was sold, and all of ours had been sold.

Mr. Untermeyer: It had all been sold?

Mr. Henry: Every share of the stock had been sold before the stock was listed.

Mr. Untermyer: Whose stock were they buying and selling for this joint account?

Mr. Henry: They were buying and selling stock that people offered to sell or offered to buy, on the Stock Exchange.

Mr. Untermyer: What was the purpose of this market operation engaged in by you four gentlemen or your four houses with  
115 respect to the stock, when none of you owned any stock?

Mr. Henry: It was in order to make a market for the stock.

Mr. Untermyer: Do you mean that it was done in order to make an apparent activity in it?

Mr. Henry: Not in order to make an apparent activity in it, but to have somebody there always to buy if anybody wanted to sell it, and somebody there always to sell, if anybody wanted to buy it.

Mr. Untermyer: Do you not know, Mr. Henry, that the market operator, Lewisohn Brothers, were doing the buying and selling themselves every day?

Mr. Henry: Surely.

Mr. Untermyer: In other words, they were putting in orders to buy and orders to sell?

Mr. Henry: Certainly.

Mr. Untermyer: Every morning?

Mr. Henry: Certainly.

Mr. Untermyer: And you were a party to that?

Mr. Henry: They were acting under our general direction.

Mr. Untermyer: Every morning they would give orders to certain brokers to buy and orders to certain brokers to sell?

116 Mr. Henry: They would put in selling orders on a scale up and buying orders on a scale down.

Mr. Untermyer: Yes.

Mr. Henry: That is done to steady the price of the stock.

Mr. Untermyer: You think so? It is done to make an appearance of activity in the stock, is it not?

Mr. Henry: No, sir. It is done to steady the price of the stock.

Mr. Untermyer: Why should you, for instance, give orders to a half a dozen brokers or more to buy a given amount of stock, and orders at the same time, to sell stock, with the idea that you would not, at the end of the day, have any stock either bought or sold?

Mr. Henry: Will you let me answer that in my own way?

Mr. Untermyer: Yes.

Mr. Henry: When a new stock is put on the Exchange, on any great exchange like the New York Stock Exchange, there is one thing that is very necessary, and that is that its price shall be steadied. When you have no active market in a stock, when you are building up an active market in a new stock, the first thing a banking  
117 house does, what it wants to do and what it must do, whether it makes a profit or a loss out of it, is to steady the price of the stock. If people come in to buy six or seven thousand shares of stock, and there is not much around, if they do not sell the stock it will be bid away up and have a big advance. On the other hand, if somebody comes in to sell six or seven thousand shares, and there

are no large buying orders in there, the price of the stock is going to be a great deal lower than it would be otherwise. If you put in buying orders on a scale down, and selling orders on a scale up, the effect of that is to steady the price of the stock. Its fluctuation is not as violent or as wide as it would be otherwise.

Mr. Untermeyer: You are a believer, then, in manipulation, Mr. Henry?

Mr. Henry: I do not know anything about manipulation.

Mr. Untermeyer: Is not the process you have just described the process of manipulation?

Mr. Henry: I do not think so.

Mr. Untermeyer: You say you do not know anything about it?

Mr. Henry: I do not think the process I have just described is what is usually termed manipulation.

118 Mr. Untermeyer: If a banking house wants to protect a new stock, why does it not simply buy that stock from outsiders who offer it, instead of trading in it by buying and selling itself?

Mr. Henry: Because you can not make only one side of a market. You have to make both sides of the market.

Mr. Untermeyer: And why can it not buy that stock and sell it, when it is acquired, instead of putting in orders every day—buying orders on a scale and selling orders on a scale, for the purpose of creating an apparent activity in that stock which does not exist?

Mr. Henry: It does not do anything of the kind, Mr. Untermeyer.

Mr. Untermeyer: Do you not know, Mr. Henry, that when you are trying to make a market for a stock in that way, by putting in buying and selling orders by different brokers, for the same house, that you are creating a fictitious appearance of activity?

Mr. Henry: You would be if they were at the same price.

Mr. Untermeyer: But even if there is a difference of one-eighth in the price?

Mr. Henry: Not an eighth. If you put in a scale of  
119 selling orders above a price, and a scale of buying orders below a price, I see no manipulation about that.

Mr. Untermeyer: You see no manipulation in that, at all?

Mr. Henry: No, sir.

Mr. Untermeyer: What do you understand manipulation to be? What is your idea of manipulation?

Mr. Henry: I suppose it might be defined as matching orders.

Mr. Untermeyer: Do you not understand, Mr. Henry, that matching orders and manipulation are different things?

Mr. Henry: I know very little about manipulation. I have no personal experience, Mr. Untermeyer.

Mr. Untermeyer: But that is because you do not think this is manipulation that you have been doing?

Mr. Henry: I do not know what term you want to use. What we have been doing is to steady the price. It is not manipulation.

Mr. Untermeyer: Let us see about that. How many shares were dealt in during the month of October by Lewisohn Brothers under this joint arrangement?

Mr. Henry: I could not tell you, but it is a great many.

120 Mr. Untermeyer: We have here a statement that during those—I think nineteen or twenty days of October—Lewisohn Brothers, under this joint arrangement, purchased 149,600 shares, and sold 172,900 shares; and I understand you to say, in that connection, that they started without any shares?

Mr. Henry: Yes; we did not have any stock, when we——

Mr. Untermeyer (interposing): According to that, they were short; your syndicate operations in this operation were short about 23,000 shares, were they not?

Mr. Henry: No; because we got some stock from Mr. Doheny and Mr. Canfield, later on.

Mr. Untermeyer: Do you know whether you made any money in this market operation?

Mr. Henry: I think we lost money in it.

Mr. Untermeyer: You think you lost?

Mr. Henry: Yes.

Mr. Untermeyer: You expected to lose money, did you not?

Mr. Henry: We did.

Mr. Untermeyer: You were in it to lose money?

Mr. Henry: Yes.

Mr. Untermeyer: And you were willing to lose money in order to make this appearance of activity in the market?

121 Mr. Henry: Not to make any fictitious appearance of activity.

Mr. Untermeyer: You think it was real?

Mr. Henry: We were willing to lose money to give the stock a real market. That is what we have done.

Mr. Untermeyer: What is the difference between a real market and a fictitious market?

Mr. Henry: A great deal of difference.

Mr. Untermeyer: Explain it.

Mr. Henry: A real market means that if a man has stock to sell, he can go and sell it, and find a buyer who will buy it and pay money for it, and that if he wants to buy, he can go and buy it, and find a seller who will sell it and deliver it to him, and he will be able to give a check and become the owner of it. That is what I mean by a real market. That is what has existed in California Petroleum ever since it has been on the board.

Mr. Untermeyer: Suppose this real market has been created at fictitious prices for the stock; that is, by increasing the price of the stock over and above what it would be in a free market, where there was no manipulation?

Mr. Henry: If you come to talk about fictitious prices, Mr. Untermeyer, the only thing I am willing to admit is that all these prices have been fictitiously low on California Petroleum.

122 Mr. Untermeyer: Never mind about that. We are not discussing the merits of the property at all, but we are discussing the stock market operations in the property.

Mr. Henry: I know, but——

Mr. Untermeyer (Interposing.) At what price did the stock start?

Mr. Henry: We sold all the syndicate stock at 40 and all of our

own stock—we sold 21,185 shares at 40 and 3,043 shares at 45. 45 was the top price that we got for any of our own stock.

Mr. Untermeyer: Having sold your stock at 40 and 45—

Mr. Henry: I would like to make a point of that, there—

Mr. Untermeyer: Will you not let me finish my question?

Mr. Henry: (Continuing.) Because that has gone in the record wrong.

Mr. Untermeyer: I beg your pardon. What is it that you desire to say?

Mr. Henry: I have seen it in every newspaper in New York that we sold out the stock at 70, which is not the case.

Mr. Untermeyer: Well, just wait a minute.

123 Mr. Henry: It is not fair to us, in this examination, that a statement should be put out that is not so.

Mr. Untermeyer: I am perfectly willing, Mr. Henry, that you should make any statement that you want to make on the subject. Have you stated all that you want to say about it?

Mr. Henry: Thank you. That is all at the moment.

Mr. Untermeyer: Having sold your stock, in the way you have stated, you went into the market and bought and sold stock around 70?

Mr. Henry: We did not do any selling to speak of around 70.

Mr. Untermeyer: Did you not put in buying and selling orders around 70?

Mr. Henry: We mostly got landed with the stock—

Mr. Untermeyer: Will you not answer my question? Do you not know that Messrs. Lewisohn Brothers were operating in the stock around 70, under buying and selling orders?

Mr. Henry: They were operating in it at every price.

Mr. Untermeyer: And they were operating in it around 70, were they not?

Mr. Henry: Yes; they were operating in it around 70, and I think, at 72. I do not remember when it sold at 72.

Mr. Untermeyer: How high did the stock go under this 124 process of buying and selling orders?

Mr. Henry: Under what process of buying and selling orders?

Mr. Untermeyer: How high did the stock go?

Mr. Henry: I think the highest price at which the stock was sold was 72 and a fraction.

Mr. Untermeyer: When did the stock reach this highest price?

Mr. Henry: I do not remember that. It was shortly after it went on the board.

Mr. Untermeyer: In the month of October?

Mr. Henry: Oh, yes.

Mr. Untermeyer: At what is it selling now?

Mr. Henry: About 50.

Mr. Untermeyer: 50?

Mr. Henry: I think so.

Mr. Untermeyer: Meantime the public came in very largely, between 50 and 70, did it not?

Mr. Henry: I suppose so.

Mr. Untermeyer: Are you still maintaining this Stock Exchange pool through Lewisohn?

Mr. Henry: What Stock Exchange pool?

125 Mr. Untermeyer: Are you still maintaining this joint operation on the Stock Exchange?

Mr. Henry: We are buying and selling it every day for the account of the original banking group.

Mr. Untermeyer: Every day?

Mr. Henry: Yes, sir.

Mr. Untermeyer: And you are putting in buying and selling orders?

Mr. Henry: Yes, sir. We are doing our best to——

Mr. Untermeyer: What are your buying and selling orders now?

Mr. Henry: I could not tell you that. I do not handle that personally.

Mr. Untermeyer: I thought you consulted every day about it.

Mr. Henry: No; not every day.

Mr. Untermeyer: But you frequently consult about it?

Mr. Henry: Not in this stage of the situation. Their general instructions are to steady the market of the stock, and to put in buying orders below the price and selling orders above it.

Mr. Untermeyer: What is the scale? What is the difference between the buying and selling orders from day to day?

126 Mr. Henry: That depends entirely on the market situation.

Mr. Untermeyer: Well, what was the scale yesterday, for instance?

Mr. Henry: I do not know. I was down here yesterday.

Mr. Untermeyer: What was the scale the last time you knew the graded scale on which they would be put in?

Mr. Henry: A scale like that, Mr. Untermeyer, will change half a dozen times a day, depending upon the activity of the market. Sometimes we do it on one-eighth, and sometimes on points and sometimes on half points. The amount you will take at different prices down, and the amount you will take at different prices up depends on the breadth and activity of the rest of the market.

Mr. Untermeyer: It depends on the activity of the market in that particular stock, does it not?

Mr. Henry: Not so much upon that as upon the general market. In introducing a new stock, the point you are working at all the time is to have the stock move in accordance with the rest of the market. If the rest of the market goes up, you want your stock to go up, and if the rest of the market goes down, you want your stock to go down.

127 Mr. Untermeyer: You want your stock to go with the rest of the market?

Mr. Henry: Yes. You always want it to be a little better than the rest of the market.

Mr. Untermeyer: And to put it up or down with the rest of the market?

Mr. Henry: You want it to move naturally.

Mr. Untermeyer: Do you call that moving naturally?

Mr. Henry: Yes.

Mr. Untermeyer: When you put it up or down?

Mr. Henry: You do not put it up or down.

Mr. Untermeyer: Who do you give these orders to let it go with the rest of the market, except to put it up or down with the rest of the market?

Mr. Henry: Because if the rest of the market goes up, you do not want your stock to lag behind, and if the rest of the market goes down, you do not want your stock to stand up as a target, regardless of the rest of the market.

Mr. Untermeyer: Why not?

Mr. Henry: Because it is important on the market, when a stock is not thoroughly digested, and especially when it is not strictly an investment stock, but is a semi-speculative stock, that we try to avoid having it held up artificially. We do not want to do  
128 anything artificial. If we were to hold it up artificially, that would make a target of it.

Mr. Untermeyer: So that you do not consider this operation you have described as having any artificial effect on the market?

Mr. Henry: No, sir.

Mr. Untermeyer: Not at all?

Mr. Henry: I think they neutralize—

Mr. Untermeyer: (Interposing.) You think the market on that stock would be quite the same—the natural market—if you did not operate in it at all?

Mr. Henry: I will not say that. I think the stock has a much better market, and a wider market today, because we have been operating in it, than it would have if we had not been operating in it.

Mr. Untermeyer: That is not the question.

Mr. Henry: And all that has gone to the benefit of the men who own the stock.

Mr. Untermeyer: Will you not answer my questions, Mr. Henry?

Mr. Henry: I will try to do so, certainly.

Mr. Untermeyer: My question is, whether you believe that  
129 it is not an artificial interference with the market for you to be operating in this Stock Exchange syndicate?

Mr. Henry: No, sir; I do not think it is.

Mr. Untermeyer: You do not?

Mr. Henry: No, sir.

Mr. Untermeyer: You feel that the market in California Petroleum would be exactly the same if you and your associates did not maintain this daily operation?

Mr. Henry: No, I do not. I think it would be very different.

Mr. Untermeyer: Then, if it would be different, do you not realize, Mr. Henry, that this is an artificial interference with the natural course of the market?

Mr. Henry: No, sir; I do not.

Mr. Untermeyer: You do not? Then I do not think I want to ask you any more about that.

To what extent was your firm a participant in the five million dollar syndicate?

Mr. Henry: I do not recollect. We did not have very much. I think it was about a quarter of a million that we kept in it.

Mr. Untermeyer: And your associates: Did they have much?  
130 Mr. Henry: No, not very much; and none of them had as much as they wanted.

Mr. Untermeyer: You formed the syndicate, did you not?

Mr. Henry: Yes.

Mr. Untermeyer: And you could take as much as you wanted, could you not?

Mr. Henry: We could, if we——

Mr. Untermeyer: I say, you could take as much as you wanted, could you not?

Mr. Henry: If we had decided originally that we would do that.

Mr. Untermeyer: You volunteered the statement a moment ago that none of you had as much as you wanted.

Mr. Henry: Yes.

Mr. Untermeyer: You had two and a half million dollars of the stock that did not cost you anything, did you not?

Mr. Henry: Of the common stock, you mean?

Mr. Untermeyer: Yes.

Mr. Henry: Yes; approximately two and a half million dollars.

Mr. Untermeyer: That was the speculative stock, was it not—the common stock?

Mr. Henry: Yes.

131 Mr. Untermeyer: That is the stock in which this market was made, largely?

Mr. Henry: Yes.

Mr. Untermeyer: And, having two and a half million dollars of the common stock that had cost you nothing, and making up this syndicate yourself, with the right to give yourselves as much as you wanted, do I understand you to say that you did not get as much as you wanted?

Mr. Henry: Yes; because everybody that we offered it to, practically, accepted; so that we were left with less than we hoped we would have.

Mr. Untermeyer: That is true of your associates, too, is it?

Mr. Henry: I think so. I think it was true of all of them.

Mr. Untermeyer: That being so, and the stock being so much sought after, why did you sell your two and a half million dollars' worth so low, instead of waiting for it to go up?

Mr. Henry: Because we did not want to do that.

Mr. Untermeyer: That is all you have to say about it, is it? Have you completed your answer?

Mr. Henry: To this particular question?

132 Mr. Untermeyer: Yes.

Mr. Henry: I would like to add this to it: That we did not want the stock to go up as quickly or as violently as it did. We were doing all we could to keep it down. We wanted to have the stock thoroughly digested between 40 and 50. The market took it out of

our hands, however, and ran it up to 70 in spite of us. That is the real situation.

Mr. Untermeyer: Let us see about that. This was a property that was wholly unknown when it went on the Stock Exchange, was it not?

Mr. Henry: I do not know what you mean by "unknown." I do not think it was.

Mr. Untermeyer: Was it not, Mr. Henry, an unknown property in the East?

Mr. Henry: Not wholly, no; not among the people who knew. Our operations in this stock went back to just about a year ago. It was a year ago last December——

Mr. Untermeyer: Will you not answer my question, Mr. Henry?

Mr. Henry: I am trying to do so.

Mr. Untermeyer: This California Petroleum Company was organized in September, 1912, was it not?

133 Mr. Henry: Yes.

Mr. Untermeyer: That was a new name, was it not?

Mr. Henry: It was a new name.

Mr. Untermeyer: That is what I ask you.

Mr. Henry: Yes.

Mr. Untermeyer: The speculators in the Street had never heard of it before, had they?

Mr. Henry: The speculators in the Street?

Mr. Untermeyer: Yes.

Mr. Henry: No, I do not think so.

Mr. Untermeyer: And the people in the oil business did not know the name "California Petroleum Company," did they?

Mr. Henry: They knew all about the properties, yes, that the California Petroleum Company owned.

Mr. Untermeyer: The operations in this stock during the month of October were largely on behalf of the room traders and speculators, were they not?

Mr. Henry: I do not know, really, who contributed most of these transactions.

Mr. Untermeyer: How many stockholders are there today on the stock list?

Mr. Henry: Of these two companies?

Mr. Untermeyer: No; of the California Petroleum Company.

134 Mr. Henry: I think I have that here.

Mr. Untermeyer: Let me know. How many stockholders are there today?

Mr. Henry: I do not think I have got that here, after all. Just a moment. I may have it here, too.

Mr. de Gersdorff: We can supply that, Mr. Untermeyer.

Mr. Untermeyer: I would like to know.

Mr. Henry: I have not got it. I am sorry. I could very readily get that as of——

Mr. Untermeyer: You have no recollection of the matter, have you?

Mr. Henry: There were a great many hundred.

Mr. Undermyer: That is very indefinite. I am speaking of the California Petroleum Company, you understand.

Mr. Henry: Yes.

Mr. Undermyer: Have you seen the stock list lately?

Mr. Henry: No, sir; I have not.

Mr. Undermyer: Are there as many as 200 stockholders?

Mr. Henry: I should say there were nearer 2,000.

Mr. Undermyer: But you can not give us the information any more definitely?

Mr. Henry: I can give you the exact number as of, I think it was, the 14th of December, when the books were closed for the dividend.

Mr. Undermyer: That is near enough. How many were there then?

Mr. Henry: I can get it for you.

Mr. Undermyer: Oh. You have not got it in your mind?

Mr. Henry: No. That was the day we closed the books, and the trust company will have a record of that.

Mr. Undermyer: Do you know how much stock was sold between 50 and 70?

Mr. Henry: I can tell you how much we sold?

Mr. Undermyer: Do you mean through Lewisohn Brothers?

Mr. Henry: I mean through our banking group.

Mr. Undermyer: No, no. I mean on the Exchange, how much was sold?

Mr. Henry: No; I have not got that.

Mr. Undermyer: Between those figures?

Mr. Henry: I could not give you that. I think you have that, Mr. Undermyer.

Mr. Undermyer: No.

Mr. Henry: Did not Mr. Lewisohn put that in evidence?

Mr. Undermyer: I do not think so.

Mr. Henry: It would be between about 62½ and 70. I think it went on the Exchange about 62½ or 64, or somewhere around there.

Mr. Undermyer: The Committee desires to know the names of national banks and officers of national banks who participated in this syndicate operation of the California Petroleum Company.

Mr. Henry: Mr. Undermyer, I very greatly regret that I do not feel at liberty to give the committee that information.

Mr. Undermyer: You decline to do so?

Mr. Henry: Yes, sir; I respectfully decline to do so.

The Chairman: I will state, as Chairman of the Committee, that it becomes my duty to inform you, Mr. Henry, that your declination to answer this question, which the Committee considers within its jurisdiction under the resolution referring this inquiry to it, will be reported to the general committee as a contempt of the authority of the House, for such action as the entire committee and the House may see fit to take in the premises, if you persist in your declination.

Mr. Henry: Yes, sir; I realize that, Mr. Chairman.

The Chairman: The Committee does not feel that it is asking any question that it has not the right to ask. It has considered the memorandum in your behalf that has been submitted to it, and feels that it is its duty to propound this question, particularly with relation to national banking institutions and officers taking part in this operation, involving securities of corporations doing business between the States.

Mr. Henry: I understand.

Mr. Untermeyer: Do you also decline to state the name of the fourth partner in your syndicate?

Mr. Henry: Yes.

Mr. Untermeyer (Continuing): Who had an interest of  
138 twelve and a half per cent?

Mr. Henry: Yes, I do, Mr. Untermeyer.

Mr. Untermeyer: Are you a director in this company?

Mr. Henry: I am.

Mr. Untermeyer: And a member of the finance committee?

Mr. Henry: Yes, sir.

Mr. Untermeyer: And were you such in October, when this stock was put upon the list?

Mr. Henry: I was.

Mr. Untermeyer: Are other members of your firm directors?

Mr. Henry: No, sir; I am the only one from our firm.

Mr. Untermeyer: When your corporation applied to have this stock listed, were you a member of the finance committee?

Mr. Henry: I was.

Mr. Untermeyer: Were you the chairman of that committee?

Mr. Henry: I do not think we have ever elected a chairman.

Mr. Untermeyer: Was the application made under your direction?

Mr. Henry: Not directly. It was made by the company.

Mr. Untermeyer: But was the application prepared under  
139 your direction and that of the statistician of your office?

Mr. Henry: It was prepared by the vice-president and by the treasurer of the company, both of whom were in New York at the time, with such help as they got from our statistician, because he was familiar with the procedure that the listing committee required.

Mr. Untermeyer: Did you take part in the preparation of the application?

Mr. Henry: I looked it over after it was finished.

Mr. Untermeyer: And did you take it to the Stock Exchange?

Mr. Henry: I appeared before the committee.

Mr. Untermeyer: And urged the listing of the security?

Mr. Henry: I requested it; yes, sir.

Mr. Untermeyer: You understood, did you not, that when the security was listed it would become available as collateral in stock exchange loans?

Mr. Henry: I supposed it would, after a reasonable length of time, yes.

Mr. Untermeyer: Is it not a fact, Mr. Henry, that loans made on

the Stock Exchange are made only on securities that are listed on the Stock Exchange?

Mr. Henry: I think that is the rule; but I do not think  
140 it is lived up to.

Mr. Untermeyer: That is the rule at the loan stand, is it not, that it has to be all listed Stock Exchange collateral?

Mr. Henry: I think they often put in things that are not listed. I am not familiar with the regulation about it.

Mr. Untermeyer: One of your purposes in having the stock listed was to make it available as collateral, was it not?

Mr. Henry: No, sir; that was not one of our purposes.

Mr. Untermeyer: It was not?

Mr. Henry: No, sir.

Mr. Untermeyer: That had nothing to do with it?

Mr. Henry: That had nothing to do with our purposes in it.

Mr. Untermeyer: In order to be readily marketable it had to be listed?

Mr. Henry: It did not have to be. It was all marketed before it was listed.

Mr. Untermeyer: No, but in order to be marketable, publicly marketable?

Mr. Henry: Marketable?

Mr. Untermeyer: Yes.

141 Mr. Henry: It was much better to have it listed, yes. It was much better to have it listed.

Mr. Untermeyer: Do you know of any stock that is readily, freely marketable, that is not a listed stock?

Mr. Henry: I think I probably could recall instances.

Mr. Untermeyer: Can you recall any, today, where a stock that is not listed is readily marketable?

Mr. Henry: I do not think you would wait very long to get Temple Iron Company stock off your hands, if you had it.

Mr. Untermeyer: That is not marketable today, is it?

Mr. Henry: I think it is dissolved.

Mr. Untermeyer: Is it marketable? Is there any of it outstanding?

Mr. Henry: I think it has been dissolved.

Mr. Untermeyer: Is there any of it outstanding?

Mr. Henry: I do not know whether there is or not.

Mr. Untermeyer: Did you ever hear of its being dealt in on the Stock Exchange?

Mr. Henry: When it was not listed?

Mr. Untermeyer: Did you ever hear of its being dealt in publicly and having a free market?

Mr. Henry: No; but it always commanded a market. The Temple Iron Company's stock always commanded a market.

142 Mr. Untermeyer: It was not a readily, freely marketable stock, was it?

Mr. Henry: Anybody that had it could sell it.

Mr. Untermeyer: Was it freely bought and sold and dealt in?

Mr. Henry: Anybody that had it could sell it. I think Atlas

Portland Cement stock is another instance of stock that was quite actively traded in at one time and was never on the Stock Exchange.

Mr. Untermyer: I am asking you to tell me the name of any stock today being dealt in today or this month, that is freely marketable, that is not listed. Can you tell me of one, if there is one?

Mr. Henry: I think the Chicago Elevated Railways preferred would probably be a type of that. Whoever would have that stock would be able to sell it all right.

Mr. Untermyer: Is that a marketable stock, sold from day to day in New York?

Mr. Henry: No; I do not think it is.

Mr. Untermyer: Do you not know what I am asking you about, Mr. Henry?

Mr. Henry: You mean, is there any stock today that has an active market, which is not on the Exchange?

Mr. Untermyer: Yes, that is what I mean.

143 Mr. Untermyer: Its activity comparing over the counter and on the curb with that of stock that is listed on the Exchange?

Mr. Untermyer: Do you not know what is active stock?

Mr. Henry: I am trying to see whether I understood you.

Mr. Untermyer: I think you do. You know what active stock is, do you not?

Mr. Henry: There are plenty of stocks on the curb that have an active market.

Mr. Untermyer (interposing): They are listed on the curb, are they not?

Mr. Henry: Some of them are listed on the curb and some of them are not. There is a lot of activity in plenty of stocks which are not on the exchange.

Mr. Untermyer: You want the committee to understand, do you, Mr. Henry, that in applying to have this stock listed you and your associates did not have in mind making it actively marketable?

Mr. Henry: No sir; I do not want to say anything of the kind, because that is just what we did have in mind.

Mr. Untermyer: That is what you did have in mind?

Mr. Henry: Yes.

Mr. Untermyer: What is what we have been trying to find out.

144 You knew, did you not, Mr. Henry, that if the stock was put upon the regular list, it would be quoted on that list, and that those quotations would be carried throughout the country?

Mr. Henry: Yes sir.

Mr. Untermyer: You knew that the quotations of the listed stock of the New York Stock Exchange are carried in the newspapers through the mails, and over the telegraphs throughout the United States?

Mr. Henry: I think so.

Mr. Untermyer: That is all.

Mr. Henry: I would like to read to the committee a memorandum prepared for me by Senator Spooner in regard to my declination

to answer the question propounded to me a little while ago. May I read it?

Mr. Untermyer: Certainly.

Mr. Henry: I declined to answer the question, upon the advice of counsel that the committee is without jurisdiction to require the information called for, upon the grounds:

1. That the subject matter is one in respect to which the Congress has without power to legislate.

2. That the question is an unlawful intrusion into the private affairs of a citizen, under the fourth and fifth amendments to the Constitution of the United States.

3. Generally, that the committee is not lawfully entitled to compel the information called for.

Mr. Untermyer: It is your idea, Mr. Henry, that the participation of national banks and officers of national banks in any syndicate operations affecting securities that are listed on the Stock Exchange and carried through the mails and over the telegraphs all over the United States is not a competent subject of Congressional inquiry?

Mr. Henry: No sir; I do not think that that says that; because I have given you, Mr. Untermyer, all the information that it seems to me has any bearing on that point. We have said there were no national banks in; that there were fifteen officers of these national banks in it. We have given you all the information of that kind that it seems to me has any bearing on this thing. I very much hope that the committee will not find it necessary to press that question. It seems to me that I have come down here and given you all the information that I can. I have not kept back a thing and have given the complete story of a very interesting and recent operation of the New York Stock Exchange. I have given our profits. I have given you the terms of our syndicate. I have given you the full machinery of everything in the way of the transaction as it was handled, and I have given you full information as to the composition of the syndicate in so far as the banks and officers were in it and were not in it; and I very much hope you will not find it necessary to press for the names asked for.

Mr. Untermyer: Do you not realize, Mr. Henry, that in the absence of the names of the officers of the national banks who have participated in this syndicate, a reflection is left upon other officers of national banks in New York City who may not engage in that kind of enterprise?

Mr. Henry: I do not.

Mr. Untermyer: And that it is only just to them that these names should be given?

Mr. Henry: I do not know anything about—

Mr. Untermyer (continuing): That it is only just that the names should be given of those who had anything to do with that sort of business?

Mr. Henry: I do not see why there should be any reflection on those who have not gone in, because I do not see any reflection on those who have.

I want to make this statement, plainly, that we are not ashamed

of any of those who participated, and we have no reason to suppose that any one of those men would have the slightest hesitation in giving the information that he was a member of the syndicate.

147 Mr. Untermyer: Then why do you not inquire of them and get their permission to give their names?

Mr. Henry: Because I do not think it is a proper thing to do.

Mr. Untermyer: You have had two weeks' notice that the committee would put this question to you.

Mr. Henry: I have; but I do not consider that it is a proper thing for me to do.

Mr. Untermyer: Have you any other reason for not asking their permission to give their names?

Mr. Henry: No; I have no other reason except that I do not think it is the proper thing to do.

148 The Chairman: I want to state that the Committee appreciate the fact that you have testified without evasion, and with a desire on your part to furnish such facts as you consider you should furnish, acting under advice of counsel where you have come to a different conclusion, and the committee also wants to express through its Chairman that it considers it the duty of every citizen who believes in organized government, when summoned, to come here and furnish to the committee such information as he may have relating to a governmental inquiry. And the committee would regret exceedingly that it would have to take action that it has decided to take and submit your name to the full committee for its determination in turn whether the House should be asked to certify your name to the District Attorney, but the committee must exercise its power. Power must be lodged somewhere, and naturally the witness or his counsel cannot be the judge of that power.

Mr. Henry: All right, sir.

Mr. Untermyer: Why do you not ask the permission of these gentlemen to furnish their names?

Mr. Henry: Because I do not think it is a proper thing for us to do.

Mr. Untermyer: Even if they are willing?

Mr. Henry: It is not honorable, and it is not good business.

149 Mr. Untermyer: You say their participation in the syndicate is nothing of which they should be ashamed?

Mr. Henry: Yes.

Mr. Untermyer: Or which they should seek to hide?

Mr. Henry: Most emphatically.

Mr. Untermyer: That being the case, if they agree with you, why do you not inquire and find out whether you can give their names?

Mr. Henry: If they feel as I do about it they may volunteer to do it. I am not going to ask them.

Mr. Untermyer: That is all.

The Chairman: You will get that information here today by telephone, so as not to delay the record?

Mr. Henry: Yes; I will do so, Mr. Chairman.

Mr. Untermeyer: Your counsel asks me to inquire of you, Mr. Henry, as to what is the business of the California Petroleum Company. Is it a holding company?

Mr. Henry: The California Petroleum Corporation is the full name of it. It is a holding company.

Mr. Untermeyer: And it holds the securities of what companies?

Mr. Henry: The American Petroleum Company and the American Oil Fields Company.

150 Mr. Untermeyer: Does it hold all the securities of those companies?

Mr. Henry: No; there is a small amount of stock outstanding.

Mr. Untermeyer: But practically all in both cases?

Mr. Henry: It owns about 98 per cent of the stock.

Mr. Untermeyer: The business of the American Petroleum Company and the American Oil Fields Company is what?

Mr. Henry: It is the business of producing and selling oil exclusively in the State of California.

Mr. Untermeyer: Let us see about that. Which is the producing company and which is the selling company, or are they both producing companies?

Mr. Henry: They are both producing companies.

Mr. Untermeyer: Have they refineries?

Mr. Henry: One of them has a topping plant, what we call a topping plant.

Mr. Untermeyer: Where is that?

Mr. Henry: In the Midway field.

Mr. Untermeyer: In what part of California is that?

Mr. Henry: It is about a third of the way from Los Angeles to San Francisco.

Mr. Untermeyer: And does it refine oil there?

151 Mr. Henry: It tops its oil.

Mr. Untermeyer: And after the oil is topped, that is, divided into distillate and crude oil?

Mr. Henry: Yes.

Mr. Untermeyer: What is done with the distillates?

Mr. Henry: My understanding of that is that all the oil produced by that company is sold to the Producers Agency in the State of California.

Mr. Untermeyer: Well, do you know personally?

Mr. Henry: The topping plant has been of such a recent date, we only put it up last month, that I do not know how it disposes of the distillate. I know previous to its installation all the oil that both companies produced was sold in California.

Mr. Untermeyer: But now that it produces distillates, don't you know that the oil company disposes of its distillates?

Mr. Henry: I do not think it does.

Mr. Untermeyer: Do you know whether it does or not?

Mr. Henry: No, but I do not think it does.

Mr. Untermeyer: Do you know whether it disposes of those distillates all over the United States?

Mr. Henry: I am sure it does not do that.

Mr. Untermeyer: Where does it dispose of its distillates?

Mr. Henry: In the State of California.

152 Mr. Untermeyer: To whom?

Mr. Henry: To one of the big companies.

Mr. Untermeyer: But to what company?

Mr. Henry: There are three or four companies, the Union——

Mr. Untermeyer: To which company does it sell them? since you say you know it.

Mr. Henry: I think it sells to the Producers Agency.

Mr. Untermeyer: But you do not know?

Mr. Henry: I do not know, because it has only been started six weeks ago.

Mr. Untermeyer: Have you any pipe lines?

Mr. Henry: No; except field lines.

Mr. Untermeyer: You have pipe lines in the fields?

Mr. Henry: Just a gathering system to turn it over to the main company.

Mr. Untermeyer: To what pipe line do you turn over your crude oil as turned over by your gathering lines in that field?

Mr. Henry: The American Petroleum Company, all of the oil is sold to the Agency Oil Company and——

Mr. Untermeyer: Is that under a written contract?

Mr. Henry: Under contract for all we produce.

Mr. Untermeyer: Deliverable at its refineries?

153 Mr. Henry: No, they buy it from us in the field.

Mr. Untermeyer: Are those transactions of record, by written agreements?

Mr. Henry: Yes.

Mr. Untermeyer: Have you them?

Mr. Henry: I have not them here.

Mr. Untermeyer: But you have them?

Mr. Henry: I have not them in New York. They are out in California.

Mr. Untermeyer: Will you furnish them to the committee, rather than to have us rely upon the vague knowledge or impression of yourself?

Mr. Henry: I can furnish the facts to you.

Mr. Untermeyer: Can you not furnish the contracts?

Mr. Henry: I have not got the contracts, Mr. Untermeyer.

Mr. Untermeyer: Can you not get them? You are a director of the company and the head of the finance committee.

Mr. Henry: I can furnish the facts to you.

Mr. Untermeyer: No, I am asking you now for the contracts. They will tell us the facts, will they not?

Mr. Henry: Yes, but there may be a great many other things in the contracts that have nothing to do with your inquiry.

154 Mr. Untermeyer: Never mind about that. If your oil is handled under a contract in writing the question is whether you will furnish us that contract.

Mr. Henry: There may be a great many other things in the contract that our company will not feel it is good business to disclose.

Mr. Untermyer: You will not tell us whether or not you will furnish them, or that you cannot get them?

Mr. Henry: I cannot tell you I will or will not, because I do not know whether I can get them or not.

Mr. Untermyer: That is all, unless there is something else you want to say.

Mr. Henry: I would like to talk a little about my stock, but——

Mr. Untermyer: No, this is not the place to boom stocks.

Mr. Henry: It ought not to be the place, Mr. Untermyer.

Mr. Untermyer: That is all.

Mr. Henry: All right, sir.

(Witness excused.)

155 (EXHIBIT No. 160, JAN. 7, 1913.)

William Salomon & Co.,  
25, Broad Street,  
New York.

Hallgarten & Co.,  
New York.

Confidential.

SEPTEMBER 21, 1912.

*California Petroleum Corporation Stock Syndicate.*

DEAR SIR: We are forming a Syndicate of which we shall be managers, and in which we shall participate, to purchase from us \$5,000,000 par value, Preferred stock of the California Petroleum Corporation and \$2,500,000, par value, Common stock voting trust certificates, for the sum of \$5,000,000 cash and accrued dividend on the Preferred stock.

We have reserved for you a participation in this Syndicate of \$— cash and accrued dividend, representing the equivalent of the purchase price by the Syndicate of \$— par value, Preferred Stock and \$— par value, Common Stock.

156 The Syndicate is to continue until April 1, 1913, unless sooner terminated by us in our discretion. We shall make no charge to the Syndicate for our services as Managers, but shall be entitled to retain for our own benefit, the difference in Common stock and cash between the price to the Syndicate and the price paid by us. We have arranged for the formation of other Syndicates in London and Paris to purchase further amounts of the Preferred and Common stock from us on the same terms.

Both the Preferred and Common stocks are to remain syndicated for sale under our management, the Preferred stock not to be sold at less than 91½ and accrued dividend, nor the Common stock at less than 40.

We hand you herewith copy of a letter which we have received under date of September 20, 1912, from Messrs. E. L. Doheny and C. A. Canfield, describing the California Petroleum Corporation to be organized and its stocks, with certain other data, and also a letter from Dr. Ralph Arnold, dated August 13, 1912, concerning the same. We are further sending you under separate cover, a complete copy of Dr. Arnold's report to us upon the controlled properties, together with maps and photographs.

The accounts of the controlled properties were audited for us by Messrs. Price, Waterhouse & Co., Chartered Accountants.

157 All legal matters in connection with the new corporation are under the supervision of our counsel Messrs. Cravath, Henderson & de Gersdorff, for whom the titles to the proven properties have been passed upon by H. W. O'Melveny, Esq., of Messrs. O'Melveny Stevens & Milliken, of Los Angeles, California.

Please advise us promptly if you desire to accept this participation and in due course we will send you formal confirmation, together with copies of the Syndicate Agreement for your signature and files.

Yours truly,

\_\_\_\_\_,  
\_\_\_\_\_,  
Syndicate Managers.

158

(EXHIBIT No. 161, JAN. 7, 1913.)

William Salomon & Co.,  
25 Broad Street,  
New York.

Hallgarten & Co.,  
5 Nassau Street,  
New York.

NEW YORK, September 24, 1912.

Confidential.

*California Petroleum Corporation Stock Syndicate.*

DEAR SIR: Referring to your cash participation in the above syndicate of \$— we now enclose two copies of the Syndicate Agreement.

Kindly sign one copy for the amount of your participation, as above stated, and return same to us, retaining the other copy for your files.

Yours truly,

\_\_\_\_\_,  
\_\_\_\_\_,  
Syndicate Managers.

159-418

(EXHIBIT 162, JAN. 7, 1913.)

William Salomon & Co.,  
25 Broad Street,  
New York.

Hallgarten & Co.,  
5 Nassau Street,  
New York.

OCTOBER 21, 1912.

Confidential.

*California Petroleum Corporation Stock Syndicate.*

DEAR SIR: Referring to your participation in the above syndicate we would say that as all the preferred and common stocks purchased have now been sold, we take pleasure in enclosing our check for \$— being your share of the profit realized. Kindly acknowledge receipt of same as in final settlement of your interest in the syndicate.

Yours truly,

\_\_\_\_\_,  
\_\_\_\_\_,  
Syndicate Managers.

\* \* \* \* \*

# REPORT

OF THE

## COMMITTEE APPOINTED PURSUANT TO HOUSE RESOLUTIONS 429 AND 504 TO INVESTIGATE THE CONCENTRATION OF CONTROL OF MONEY AND CREDIT

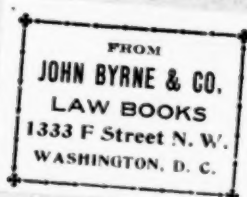
---

SUBMITTED BY MR. PUJO

FEBRUARY 28, 1913 — Referred to the House Calendar and ordered  
to be printed, with illustrations

---

GOV





# REPORT

OF THE

## COMMITTEE APPOINTED PURSUANT TO HOUSE RESOLUTIONS 429 AND 504 TO INVESTIGATE THE CONCENTRATION OF CONTROL OF MONEY AND CREDIT

---

SUBMITTED BY MR. PUJO

FEBRUARY 28, 1913 — Referred to the House Calendar and ordered  
to be printed, with illustrations

---

WASHINGTON  
GOVERNMENT PRINTING OFFICE

1913

# CONTENTS.

## PART I.—INTRODUCTORY STATEMENT.

	Page.
Authorization of inquiry.....	13
Refusal of banks and trust companies to furnish required information, citing Revised Statutes, United States, 5241.....	14
Employment of counsel.....	14
Access to books of bank essential.....	14
Bill to amend Revised Statutes, United States, 5241.....	15
Passed by House but not by Senate.....	15
Reasons for temporary adjournment of hearings.....	15
President's refusal to direct comptroller to obtain required information.....	15
Committee unable to complete investigation owing to inability to obtain access to books of national banks but submits intermediate report.....	17
Divisions of the subject matter of inquiry.....	17

## PART II.—REVIEW OF THE EVIDENCE.

### CHAPTER FIRST.

#### CLEARING-HOUSE ASSOCIATIONS.

Section 1:	
General description.....	18
Number in United States.....	18
Associated in a department of American Bankers Association.....	18
Function.....	18
Process of clearing described.....	18
Membership and classes of.....	18
Their facilities essential.....	19
Section 2:	
Examinations of members.....	19
Periodical examinations by associations.....	19
Governmental examinations inadequate.....	20
Exchange of information by examiners of associations and of Federal and State Governments.....	20
Possible abuse of examination by associations.....	21
Section 3:	
Exclusion of small banks from membership.....	21
Minimum capital of \$1,000,000 required by New York association.....	21
Other banks must clear through agency of a member.....	21
Such agency terminable summarily.....	21
Consequence of withdrawing clearing privilege.....	21
No reason for exclusion of small banks.....	22
No such requirement in Chicago association.....	22
Section 4:	
Power of such associations.....	22
Facilities essential.....	22
Consequence of exclusion or expulsion.....	22
The case of two Brooklyn banks.....	22
Section 5:	
Such associations unincorporated and unregulated.....	24
Voluntary associations.....	24
Subject only to their own governing bodies.....	24
May exclude or expel members without reason.....	25
Section 6:	
Usurpations of power.....	26

<b>Section 7:</b>		
Issuance of circulation.....		Page.
In panics of 1893 and 1907.....		26
Involve suspension of specie payments.....		26
Determined by a small committee.....		27
Dangerous power for some members to possess over others.....		27
Case of Mechanics & Traders Bank in panic of 1907.....		27
Case of Oriental Bank and others in panic of 1907.....		27
<b>Section 8:</b>		
Regulating charges for collecting out-of-town checks.....		28
Number of associations so doing.....		28
Penalties for violation of rule.....		28
Associations perform no service in such collections.....		28
Deprive banks of free agency and suppress competition.....		28
Defense that rule was adopted to prevent losses.....		29
Answer to such defense.....		29
<b>Section 9:</b>		
Enforcing uniform rate of interest paid on deposits and charged on loans, etc.....		30
Such practices admittedly outside province of association.....		30
Not different in principle from enforcing uniform collection charges..		30
<b>Section 10:</b>		
Salt Lake City and Pittsburgh associations.....		31
Illustrate logical development of practice of enforcing uniform collection charges.....		31

## CHAPTER SECOND.

## NEW YORK STOCK EXCHANGE.

<b>Section 1:</b>	
General description.....	33
Functions.....	33
Primary market for securities.....	33
Volume of business.....	33
Quotations accepted as measures of value.....	33
Important place in financial system.....	33
Unincorporated.....	33
Organization.....	33
Membership, number and value.....	33
Arrangements on floor of exchange.....	34
No records kept of transactions.....	34
Money lending on floor and estimated amount of.....	34
Ownership of building.....	34
Ownership and control of ticker service.....	34
Telephone communication from building.....	35
Membership in competitive exchanges.....	35
<b>Section 2:</b>	
Stock exchange clearing house.....	35
Process of clearing.....	35
Facilitates speculation.....	35
<b>Section 3:</b>	
Members preferred creditors.....	35
Value of membership of insolvent members goes first to fellow members..	35
<b>Section 4:</b>	
Procedure for listing.....	35
Conditions, including statement of affairs, appointment of transfer agent and registrar in New York, etc.....	35
Passed on first by stock list committee and finally by governing committee.....	36
<b>Section 5:</b>	
Value of listing.....	36
Gives wider market and greater availability for loans.....	36
Banks base loans on quotations.....	36
Practically all issues of great corporations listed.....	36
<b>Section 6:</b>	
Unlisted department.....	37
Abolished in 1910.....	37
Permitted trading in securities of corporations giving no information..	37

# CONTENTS.

5

<b>Section 7:</b>		
Consolidated exchange and curb.....	Page.	
<b>Section 8:</b>		37
Boycott of consolidated exchange.....		37
No relations permitted with members of consolidated exchange under heavy penalty.....		37
Purpose to destroy consolidated exchange.....		38
<b>Section 9:</b>		
Conditions on which members may trade on curb.....		38
<b>Section 10:</b>		
Engraving monopoly.....		38
Only securities engraved by persons approved by exchange will be listed.....		38
<b>Section 11:</b>		
Enforcing uniform commissions.....		39
<b>Section 12:</b>		
Striking securities from list.....		39
Broad reserved powers in that regard.....		39
Small amount outstanding one ground.....		39
Case of voting trust certificates of Southern Railway.....		40
Case of old American Tobacco Co.....		41
<b>Section 13:</b>		
Rehypothecation of customers' securities.....		42
Permitted by exchange regardless of amount owing by customers.....		42
Consequences to customers.....		42
Practice sought to be justified on ground that customers consent.....		42
<b>Section 14:</b>		
Unwholesome speculation.....		42
Here that exchange most affects the people at large.....		42
Views of Hughes committee on speculation.....		43
High ratio of sales to number of shares listed.....		43
Disproportion between shares sold and shares transferred.....		43
Illustrative cases.....		43
Minimum margin 10 per cent.....		45
Consequences of excessive speculation.....		45
Injurious, like all public gambling.....		45
Withdraws millions from industry.....		45
<b>Section 15:</b>		
Manipulation.....		46
Purpose to inflate or depress prices or create unreal appearance of activity.....		46
Forms.....		46
Practice admitted.....		46
Illustrative cases.....		47
Columbus & Hocking Coal and Iron pool.....		47
Rock Island "Episode" of December 27, 1909.....		50
California Petroleum Co., flotation.....		50
<b>Section 16:</b>		
Short selling.....		52
Of what it consists.....		52
Like speculation for the rise, should be curbed, not abolished.....		52
Stock exchange viewpoint of short selling.....		52

## CHAPTER THIRD.

### CONCENTRATION OF CONTROL OF MONEY AND CREDIT.

<b>Section 1:</b>		
Two kinds of concentration.....		55
Concentration of volume of money in particular cities distinguished from concentration of control.....		55
Inquiry deals only with latter.....		55
<b>Section 2:</b>		
Fact of increased concentration of control admitted.....		55
Percentage of banking resources of country held by New York banks and trust companies.....		55
Percentage of banking resources of New York held by 20 principal banks and trust companies in 1911, 1906, and 1901.....		55

<b>Section 3:</b>		<b>Page</b>
Processes of concentration.....		56
Consolidations.....		56
Stock holdings.....		56
Interlocking directorates.....		56
Affiliations with insurance companies, railroads, producing and trading and public utility corporations.....		56
Partnership arrangements in purchasing or underwriting security issues.....		56
<b>Section 4:</b>		
Agents of concentration.....		56
J. P. Morgan & Co.....		56
First National Bank of New York.....		56
National City Bank of New York.....		56
Lee, Higginson & Co., of Boston and New York.....		56
Kidder, Peabody & Co., of Boston and New York.....		56
Kuhn, Loeb & Co.....		56
<b>Section 5:</b>		
J. P. Morgan & Co.....		57
Organization.....		57
General character of business.....		57
Resources, deposits, and profits.....		57
Security issues marketed.....		57
Affiliations of, with—		
Bankers Trust Co., including organization, growth, and voting trust.....		57
Guaranty Trust Co., including growth thereof and voting trust... ..		59
Astor Trust Co.....		59
National Bank of Commerce.....		59
Liberty National Bank.....		60
Chemical National Bank.....		60
Equitable Life Assurance Society.....		60
Summary of affiliations with financial corporations.....		60
Affiliations of, with—		
New York Central lines.....		60
New York, New Haven & Hartford Railroad and subsidiaries.....		60
Northern Pacific Railway.....		61
Southern Railway.....		61
Reading Co.....		61
Erie Railroad.....		61
Lehigh Valley Railroad.....		62
Chicago Great Western Railway.....		62
Atchison, Topeka & Santa Fe Railway.....		62
Pere Marquette Railway.....		62
Cincinnati, Hamilton & Dayton Railway.....		62
International Mercantile Marine Co.....		62
Other transportation systems.....		63
Affiliations of, with—		
United States Steel Corporation.....		63
International Harvester Co.....		64
General Electric Co.....		64
Other producing and trading corporations.....		64
Affiliations of, with—		
American Telephone & Telegraph Co.....		65
Western Union Telegraph Co.....		65
Interborough Rapid Transit Co.....		65
Hudson & Manhattan Co.....		65
Philadelphia Rapid Transit systems.....		65
<b>Section 6:</b>		
First National Bank of New York.....		66
Organization, capital, and management.....		66
George F. Baker its ruling spirit.....		66
General character of business.....		66
Resources, deposits, and profits.....		66

# CONTENTS.

7

## Section 6—Continued.

### First National Bank of New York—Continued.

#### Affiliations of, with—

	Page.
First Security Co.....	67
Chase National Bank.....	68
National Bank of Commerce.....	69
Liberty National Bank.....	69
Astor Trust Co.....	69
Bankers Trust Co.....	69
Guaranty Trust Co.....	69
Illinois Trust & Savings Bank of Chicago.....	69
Mutual Life Insurance Co.....	69

#### Summary of affiliations with financial corporations.....

#### Affiliations of, with—

Anthracite coal-carrying railroads.....	70
Chicago, Rock Island & Pacific system.....	70
Southern Railway.....	70
Chicago, Burlington & Quincy Railroad.....	70
Great Northern Railway.....	70
Northern Pacific Railway.....	70
Other transportation systems.....	70

#### Affiliations of, with—

United States Steel Corporation.....	71
William Cramp Ship & Engine Building Co.....	71
J. I. Case Threshing Machine Co.....	71
International Harvester Co.....	71
Pullman Co.....	71
American Can Co.....	71
National Biscuit Co.....	71
United States Rubber Co.....	71
Other producing and trading corporations.....	71

#### Affiliations of, with—

American Telephone & Telegraph Co.....	71
Western Union Telegraph Co.....	71
Consolidated Gas Co.....	71

## Section 7:

### National City Bank.....

Organization, capital, and management.....	71
James Stillman its ruling spirit.....	71
General character of business.....	72
Resources, deposits, and profits.....	72

#### Affiliations of, with—

National City Co.....	72
Farmers Loan & Trust Co.....	72
New York Trust Co.....	72
United States Trust Co.....	73
Riggs National Bank and American Security & Trust Co., of Washington, D. C.....	73
National Bank of Commerce.....	73

#### Summary of affiliations with financial corporations.....

#### Affiliations of, with—

Chesapeake & Ohio Railway.....	73
Chicago, Milwaukee & St. Paul Railway.....	73
Chicago & North Western Railway.....	73
Delaware, Lackawanna & Western Railroad.....	73
Southern Pacific Co.....	73
Union Pacific Railroad.....	74
Other railroad systems.....	74

#### Affiliations of, with—

Amalgamated Copper Co.....	74
Armour & Co.....	74
Lackawanna Steel Co.....	74
Other producing and trading corporations.....	74

#### Affiliations of, with—

Consolidated Gas Co.....	74
Chicago Elevated Railways.....	74
Western Union Telegraph Co.....	74

	Page.
<b>Section 8:</b>	
Lee, Higginson & Co.....	75
Organization.....	75
General character of business.....	75
Security issues purchased or underwritten.....	75
Affiliations of, with—	
National Shawmut Bank of Boston.....	75
First National Bank of Boston.....	75
Old Colony Trust Co. of Boston.....	75
Other banks and trust companies.....	75
Affiliations of, with—	
Greater transportation, producing and trading, and public-utility corporations.....	76
<b>Section 9:</b>	
Kidder, Peabody & Co.....	76
Organization.....	76
General character of business.....	76
Security issues purchased or underwritten.....	76
Affiliations of, with—	
National Shawmut Bank of Boston.....	76
Old Colony Trust Co. of Boston.....	76
Other banks and trust companies.....	76
Affiliations of, with—	
Greater transportation, producing and trading, and public-utility corporations.....	77
<b>Section 10:</b>	
Kuhn, Loeb & Co.....	77
Organization.....	77
General character of business.....	78
Resources, deposits, and profits.....	78
Security issues marketed.....	78
Affiliations of, with—	
Fourth National Bank of New York.....	78
Equitable Trust Co. of New York.....	78
National Bank of Commerce of New York.....	78
United States Mortgage & Trust Co., of New York.....	78
Other financial corporations.....	78
Affiliations of, with—	
Baltimore & Ohio Railroad.....	78
Union Pacific Railroad.....	78
Southern Pacific Co.....	79
Chicago & North Western Railway.....	79
Chicago & Alton Railroad.....	79
Chicago & Eastern Illinois Railroad.....	79
Illinois Central Railroad.....	79
Pennsylvania Railroad.....	79
Wabash Railroad.....	79
Other railroad systems.....	79
Affiliations of, with—	
Westinghouse Electric & Manufacturing Co.....	80
Other producing and trading corporations.....	80
Affiliations of, with—	
American Telephone & Telegraph Co.....	80
Western Union Telegraph Co.....	80
Kansas City Railway & Light Co.....	80
<b>Section 11:</b>	
Interrelations of members of the group.....	80
Morgan & Co. and First National Bank.....	80
Relations of Mr. Morgan and Mr. Baker.....	80
Morgan & Co.'s stock holdings in First National.....	81
Firm members or directors in common.....	81
Associated as voting trustees, directors, or stockholders in—	
Bankers Trust Co.....	81
Guaranty Trust Co.....	81
Astor Trust Co.....	81
Liberty National Bank.....	81

## Section 11—Continued.

## Interrelations of members of the group—Continued.

Associated as voting trustees, directors, or stockholders in—Continued.	Page.
Southern Railway.....	81
Chicago Great Western Railway.....	81
New York Central Lines.....	81
New York, New Haven & Hartford R. R.....	81
Pullman Co.....	81
United States Steel Corporation.....	82
William Cramp & Sons Ship & Engine Building Co.....	82
Merger of Reading Co. and Central Railroad of New Jersey.....	82
Merger of Northern Pacific and Great Northern Railways.....	82
Mutual Life Insurance Co.....	82
Anthracite railroads.....	82
Northern Pacific Railway.....	82
Adams Express Co.....	82
American Telephone & Telegraph Co.....	82
Baldwin Locomotive Works.....	82
Association in Joint Security issues.....	82
Morgan & Co., First National and National City Banks.....	82
Acquisition by Morgan & Co. of block of stock and representation in National City Bank.....	83
Acquisition of majority stock of Equitable Life Assurance Society by Mr. Morgan in conjunction with Mr. Baker and Mr. Stillman.....	83
Acquisition of some 42,000 shares in National Bank of Commerce by Mr. Baker and Mr. Stillman pursuant to understanding between them and Mr. Morgan and the equal representation of interests represented by them in the directorate and finance committee of said bank.....	84
Partnership arrangements between Morgan & Co., First National and National City Banks in the purchasing or underwriting of numerous security issues.....	86
Combined power of Morgan & Co., the First National and National City Banks.....	86
First, as regards banking resources.....	86
Second, as regards the greater transportation systems.....	87
Third, as regards the greater producing and trading corporations..	88
Fourth, as regards the greater public utility corporations.....	89
Summary of directorships held by members of the group in—	
Banks and trust companies.....	89
Insurance companies.....	89
Transportation systems.....	89
Producing and trading corporations.....	89
Public utility corporations.....	89
Relations between Morgan & Co., First National Bank, National City Bank, Lee, Higginson & Co., Kidder, Peabody & Co., and Kuhn, Loeb & Co.....	90
Act in unison and cooperation in purchasing and underwriting security issues.....	90
Course of business in such cases.....	90
Table of their joint transactions.....	92
Volume since 1905.....	101
Such joint transactions of recent growth.....	101
Mr. Davison's explanation and answer thereto.....	101
Result is suppression of competition in the supplying of capital..	102
Suppression of such competition further secured by a rule of "banking ethics".....	103
Concentration of control of money and credit admitted.....	105
Mr. Reynolds's testimony.....	105
Mr. Schiff's testimony.....	105
Mr. Baker's testimony.....	106

## PART III.—CONCLUSIONS AND RECOMMENDATIONS.

## CHAPTER FIRST.

## AS REGARDS CLEARING HOUSE ASSOCIATIONS.

	Page
Section 1: Incorporation and regulation.....	107
Section 2: Admission of the smaller banks to membership.....	109
Section 3: Examinations of members.....	109
Section 4: Issuance of clearing house certificates.....	110
Section 5: Regulation of rates for collecting out-of-town checks.....	111
Section 6: Regulation of rates of discount and of interest on deposits.....	113

## CHAPTER SECOND.

## AS REGARDS THE NEW YORK STOCK EXCHANGE.

Section 1: Need of governmental regulation.....	114
Section 2: Province of Federal Government.....	115
Section 3: Conditions precedent to transmission of quotations, etc., of stock exchanges by the mails or interstate telegraph or telephone lines.....	116
(a) As to incorporation.....	116
(b) As to publicity of affairs of corporations whose securities listed.....	117
(c) As to margins required.....	117
(d) As to manipulation.....	117
(e) As to rehypothecation of securities.....	117
(f) As to lending customers' securities.....	118
(g) As to admissions to and removals from list.....	118
(h) As to books of account of members.....	119
Section 4: Power of Congress to deny use of mails and telegraph if conditions named are not met.....	119

## CHAPTER THIRD.

## AS REGARDS CONCENTRATION OF CONTROL OF MONEY AND CREDIT.

Section 1: Evolution of the controlling groups.....	129
First, the inner group, consisting of J. P. Morgan & Co., George F. Baker, James Stillman, First National Bank, National City Bank, National Bank of Commerce, Chase National Bank, Guaranty Trust Co., and Bankers Trust Co.....	131
Second, closely allied with inner group are Lee, Higginson & Co. and Kidder, Peabody & Co.....	131
Third, less closely allied with inner group is Kuhn, Loeb & Co.....	131
Fourth, associates of inner group in Chicago, First National Bank and Illinois Trust & Savings Bank.....	131
Section 2: Control of market for security issues.....	133
Section 3: Concentration of control of money and credit admitted.....	136
Mr. Morgan's contrary testimony analyzed.....	136
Mr. Baker's testimony.....	137
Mr. Schiff's testimony.....	138
Mr. Perkins's testimony.....	138
Section 4: Interlocking directorates and consolidations.....	138
Section 5: Voting trusts in financial institutions.....	142
Section 6: Minority representation through cumulative voting.....	143
Section 7: Fiscal agency agreements.....	144
Section 8: Private bankers as depositaries.....	145
Section 9: Indifference of stockholders an aid to concentration.....	145
Section 10: Domination of railroad systems by inner groups.....	147
Section 11: Railway reorganizations as an instrument of concentration.....	148
Section 12: Supervision of security issues of interstate corporations and enforcing competitive bidding therefor.....	150
Section 13: Investments of national banks, including underwritings and promotions.....	151
Section 14: Publicity of assets and of names of stockholders of national banks.....	154
Section 15: Security-holding companies as adjuncts to national banks.....	155

# CONTENTS.

11

<b>Section 16: Relations of officers and directors to national banks</b> .....	<b>Page.</b>
(a) In borrowing from the banks.....	156
(b) In exchanging loans between bank officers and directors.....	156
(c) In receiving compensation for loans.....	156
(d) In participating in syndicate underwritings in which their banks are or become interested.....	157
<b>Section 17: Currency reform and concentration of control of money and credit..</b>	158

## CHAPTER FOURTH.

### SUMMARY OF RECOMMENDATIONS.

<b>Section 1: As regards clearing-house associations</b> .....	162
A. Incorporation and regulation.....	162
B. Examination of members.....	162
C. Issuance of clearing-house certificates.....	162
D. Regulation of rates for collecting out-of-town checks.....	162
E. Regulation of rates of discount and of interest on deposits, etc.....	162
<b>Section 2: As regards the New York Stock Exchange</b> .....	162
A. Conditions precedent to use of mails, telegraph, and telephone.....	162
1. Incorporation.....	163
2. Publicity of affairs of corporations whose securities are listed.....	163
3. Margin of 20 per cent required.....	163
4. Prohibit manipulation, wash sales, and matched orders.....	163
5. Prohibit rehypothecation of customers' securities for greater amount than is owing.....	163
6. Prohibit lending of customers' securities.....	163
7. Regulate listing and removals from list.....	163
8. Books to be open to Postmaster General.....	163
<b>Section 3: As regards concentration of control of money and credit</b> .....	163
A. Consolidations of banks.....	163
B. Interlocking bank directorates.....	163
C. Interlocking stockholdings amongst banks.....	163
D. Voting trusts in banks.....	163
E. Cumulative voting.....	164
F. Security holding companies as adjuncts to banks.....	164
G. Fiscal agency agreements.....	164
H. Private bankers as depositaries.....	164
I. Banks not to engage in underwritings.....	164
J. Investments of banks in bonds.....	164
K. Reform of railroad reorganization.....	164
L. Railroad reorganizations under supervision of Interstate Commerce Commission.....	164
M. Interstate railroad security issues under supervision of Interstate Commerce Commission.....	164
N. Competitive bidding for interstate security issues.....	165
O. Borrowings by officers from their own banks.....	165
P. Borrowers by directors from their own banks.....	165
Q. Borrowings by officers of another bank.....	165
R. Financial transactions of bank officers to be in their own names.....	165
S. Participations by bank officers and directors in underwritings.....	165
T. Accepting and offering rewards for bank loans.....	165
U. Limitation of number of directors of bank.....	165
V. Publicity of assets and stockholders of banks.....	165

## CHAPTER FIFTH.

### BILLS.

*First. Bill to amend the national banking laws.*

- Section 1.** Stating conditions on which national banks may become members of clearing-house associations.
- Section 2.** Prohibiting national banks from being parties to any understanding, association, or other agency having in view acts forbidden by section 1.
- Section 3:** Forbidding national banks to clear for or through other banks and trust companies of same locality.

- Section 4:** Forbidding national banks to make agreements with any other banks regulating collection charges, rates of discount or exchange or rates allowed on deposits.
- Section 5:** Forbidding national banks to lend money or credit in aid of any combination or agreement to control prices, etc.
- Section 6:** Amending Revised Statutes, section 5144, so as to enforce cumulative voting.
- Section 7:** Adding to the Revised Statutes, section 5144-a, providing oath for those voting at elections for directors of national banks.
- Section 8:** Amending Revised Statutes, section 5145, so as to fix maximum and minimum number of directors of national banks.
- Section 9:** Amending Revised Statutes, section 5146, relating to qualifications of directors.
- Section 10:** Prohibiting national bank officers or directors receiving rewards for making loans.
- Section 11:** Prohibiting interlocking officers and directors amongst national banks, with qualification.
- Section 12:** Prohibiting borrowing from their own banks by officers or firms or corporations in which they are interested and also other transactions between such officers and their banks.
- Section 13:** Prohibiting borrowing from their own banks by directors and certain other transactions between them except upon certain conditions.
- Section 14:** Prohibiting officers and directors of national banks from participating in promotions or underwritings of securities which shall be sold, purchased, or dealt in by their banks.
- Section 15:** Prohibiting national banks from engaging in any promotion, underwriting, or flotation of securities.
- Section 16:** Prohibiting stock of a national bank from being held by any other bank or trust company.
- Section 17:** Prohibiting the uniting of national banks with other financial corporations in ownership and management.
- Section 18:** Providing penalties for violations of the act.
- Section 19:** Providing when act shall take effect.

*Second. Bill to prevent the use of the mails and of the telegraph and telephone in furtherance of fraudulent and harmful transactions on stock exchanges.*

- Section 1:** Prohibiting transmission by the mails, or by telegraph or telephone from one State to another, of orders, quotations, etc., concerning transactions on exchanges not complying with certain conditions.
- Section 2:** Directing Postmaster General, upon finding any stock exchange not complying with conditions stated in section 1, to close mails to quotations, etc., of such exchange, and also notify national banks and principal offices of telegraph and telephone companies of his finding.
- Section 3:** Making it an offense knowingly to deposit in mails or delivery for transmission by telegraph quotations, etc., of exchanges not complying with conditions stated in section 1.
- Section 4:** Making it an offense for any telegraph or telephone company to transmit quotations, etc., of exchange not complying with conditions stated in section 1.
- Section 5:** Defining "stock exchange," "security," "manipulation of securities," "matched order," and "wash sale."
- Section 6:** Providing when act shall take effect.

#### APPENDICES

- APPENDIX A: H. R. 429) Authorizing the inquiry.
- APPENDIX B: H. R. 504)
- APPENDIX C: List of questions addressed to banks.
- APPENDIX D: Charts and diagrams of stock exchange transactions.
- APPENDIX E: Chart of interlocking directorates of Morgan & Co., First National Bank, National City Bank, Bankers Trust Co., and Guaranty Trust Co.
- APPENDIX F: Diagram of affiliations of Morgan & Co., and certain New York banking institutions.
- APPENDIX G: Diagram of affiliations of Morgan & Co., and certain Boston and Chicago banking houses.

## CONCENTRATION OF CONTROL OF MONEY AND CREDIT.

FEBRUARY 29, 1913.—Referred to the House Calendar and ordered to be printed.

Mr. PUJO, from the Committee on Banking and Currency, submitted the following

**REPORT TO THE HOUSE OF REPRESENTATIVES, TOGETHER WITH THE VIEWS OF THE MINORITY, OF THE COMMITTEE APPOINTED PURSUANT TO HOUSE RESOLUTIONS 429 AND 504, TO INVESTIGATE THE CONCENTRATION OF MONEY AND CREDIT.**

### **PART I.—INTRODUCTORY STATEMENT.**

House resolution 429 authorized and directed the Committee on Banking and Currency, as a whole or by a subcommittee, to investigate banking and currency conditions in the United States as a basis for remedial legislation. A subcommittee of 11 members was accordingly appointed.

Desiring to enlarge the scope of the investigation, the House thereafter passed resolution 504, which, after reciting that Congress had under consideration bills in relation to the currency, monetary, and national banking systems, and trade combinations, and after setting forth at length certain alleged conditions in those fields, particularly as regards concentration of control of money and credit, authorized and directed that, for the information of Congress in the consideration of the pending bills or in the formulation of others, full inquiry be made into the subjects referred to in all their bearings, to wit: "*Resolved*, That the members now or hereafter constituting the Committee on Banking and Currency, by a subcommittee consisting of the 11 members thereof already appointed under House Resolution 429 and by such substituted members as may be from time to time selected from the members of said committee to fill vacancies in the subcommittee, is authorized and directed, etc., etc." Copies of resolutions 429 and 504 are annexed hereto as Appendices A and B, respectively.

Your committee was authorized to sit during the sessions of the House and during the recess of Congress, to summon and compel the attendance of and administer oaths to witnesses, and to send for persons and papers.

A list of questions, of which the accompanying form marked "Appendix C" is a copy, was forwarded to each of the national banks as well as to the State banks and trust companies, numbering in all approximately 30,000, with the request that they return written replies. Many of the smaller national banks throughout the country and a few of the larger ones in New York and Chicago (in all about 12,000) complied with these requests except as to certain questions, to which they declined to furnish answers on the ground that the information sought was confidential as between the banks and their customers.

Most of the State institutions and of the principal national banks in the reserve cities of New York, Philadelphia, Boston, and St. Louis refused or omitted to make any return whatever and denied the power or jurisdiction of the committee to inquire into their affairs.

The national banks based their refusal on section 5241 of the United States Revised Statutes, being part of the national banking act:

SEC. 5241 (Limit of visitatorial powers). No association shall be subject to any visitatorial powers other than such as are authorized by this title or are vested in the courts of justice.

At this point, under authority expressly granted by the resolutions, Samuel Untermeyer, of New York, and Edgar H. Farrar, of New Orleans, were engaged as counsel, and later G. Carroll Todd, of New York, as junior counsel. Finding it impossible to accommodate his affairs to continued absence from home Mr. Farrar resigned on November 18, 1912, greatly to the regret of the committee and of Mr. Untermeyer.

Your committee was advised by Messrs. Untermeyer and Farrar at the time they accepted their retainers that there could be no exhaustive inquiry such as was contemplated by the resolutions without access to the books and documents of the national banks, nor unless the official examiners appointed by the Comptroller of the Currency or expert accountants to be employed by your committee were permitted to examine into certain of the transactions of the national banks and to extract from their books and otherwise such information as might be deemed necessary. Your committee was especially desirous of ascertaining, with the view of recommending remedial legislation, whether, and, if so, in what instances and to what extent, the resources of the national banks are or were controlled or being used to further the practices or to promote the financial operations referred to in the resolutions. Without such access and information it was manifestly impossible to secure a complete exposure of the existing relations of such banks to the alleged concentration of money and credit, as required by the resolutions.

Your committee was advised by counsel that the attitude assumed by the national banks and their construction of section 5241 of the Revised Statutes was untenable; that under the construction contended for the banks that were the creatures of Congress would be beyond the control of their creator, and that Congress did not intend to deprive itself or either of its branches of authority to control, supervise, or investigate the national banks or the Comptroller of the Currency in the performance of the duty delegated to him or to place the latter in the position of being the only official of the Government whose acts or omissions were beyond its scrutiny, which would be the logical effect of the claim that the enactment of section 5241 vested sole, exclusive visitatorial power over national banks in the comptroller.

Your committee, however, concluded that inasmuch as a test of this question in the courts, as was threatened on behalf of the banks, would involve delays and obstructions in the work that would be disastrous in view of the early expiration of the term of the present Congress, the wiser course would be to place the power of your committee beyond question by further legislation.

Accordingly, on May 4, 1912, at the request of your committee the chairman introduced in the House a bill amending section 5241 so as to read as follows:

Sec. 5241. No association shall be subject to any visitatorial powers other than such as are authorized by this title or are vested in the courts of justice or such as shall be or shall have been exercised or directed by the Congress or either House thereof.

This bill was promptly passed by the House on May 18, 1912.

Meantime, on May 16, 1912, the first session for the examination of witnesses was held.

It had become apparent by this time that to avoid creating in the public mind the impression that the purpose of the investigation was to gain partisan advantage in the approaching presidential election—an impression that would have been fatal to the usefulness of the investigation—the taking of testimony on the main points should be postponed.

For that reason, and also to afford time for the passage by the Senate of the bill amending section 5241, on June 13, 1912, after the examination of witnesses in relation to clearing-house associations and the New York Stock Exchange, the hearings were discontinued until after the election.

The Senate delayed action on the bill until July 31, 1912, when it was adversely reported from the Finance Committee, by a vote of 7 to 6. No final action had been taken when Congress adjourned, and the bill is still on the calendar of the Senate.

A considerable part of the data needed could have been supplied by the Comptroller of the Currency; some, but not a great deal, from reports on file in his office; and much more through further reports or examinations which he has power to require under the national banking act.

The resolutions authorizing the inquiry provided that—

The Comptroller of the Currency, the Secretary of the Treasury, and the Commissioner of the Bureau of Corporations, and their respective assistants and subordinates, are hereby respectively directed to comply with all directions of the committee for assistance in its labors, to place at the service of the committee all the data and records of their respective departments, to procure for the committee from time to time such information as is subject to their control or inspection, and to allow the use of their assistants for the making of such investigations with respect to corporations under their respective jurisdictions as the committee or any subcommittee may from time to time request.

Accordingly, early in September, 1912, your committee asked the comptroller to supply certain data concerning the business and practices of the larger national banks. He referred the request to the President for instructions, in obedience, as he claimed, to the general Executive order, issued by President Roosevelt and reissued by President Taft, which prohibited any head of department or other official thereof from furnishing information without the permission of the President.

On September 23 the President granted a hearing on the request. It was not until December 17, however, that the President rendered his decision. On that date he wrote that the Attorney General having advised him that it was within his discretion to direct the comptroller to obtain for the subcommittee the data sought, he had no objection to directing that official to supply

such as was on file, which, however, was only a fraction of the required data; but thought that it would be—

Interfering with the duties of the comptroller and imposing upon him too great a burden to make him the investigating instrument of a committee of the House, which itself has ample powers for the purpose, or, if not, can obtain them from Congress.

The voluminous correspondence between counsel for the subcommittee on the one hand, and the comptroller, the Attorney General, and the President, is in the record (pp. 2987-3051).

The last request made of the comptroller, contained in a letter from counsel for the committee to the comptroller of December 26, 1912, is in the following form:

The subcommittee of the Committee on Banking and Currency of the House of Representatives which is engaged in investigating the question of the concentration and control of money and credit under House resolution 504 has been satisfied from the beginning—and experience has confirmed its then stated view—that no exhaustive investigation can be conducted, such as is provided for by the resolution, without access to the books of account and affairs of the principal national banks in the great reserve cities.

The data we require at the moment relate to the loans made by the principal national banks in the reserve cities and involves a disclosure to the committee of the names of the borrowers and the security for such loans, from 1905 to the present time. The committee is not however interested in any of such loans except those for \$1,000,000 and over. The information is desired for the specific purpose of enabling the committee to examine witnesses in connection with such loans for the purpose of ascertaining whether, and, if so, in what way and to what extent, these banks are used by the great financial interests. In this connection I beg to inquire whether you are prepared to furnish this data and if so how soon it can be made available.

Wherever it is reasonably apparent that the transactions in question have no direct bearing upon the subject under investigation, the information will of course be regarded by the committee as confidential. Only such instances would be disclosed concerning which it may be found necessary to interrogate witnesses, and I beg to repeat that no data is desired of any single transaction or series of transactions of less than \$1,000,000.

Not only have the names of large borrowers from the national banks and the collateral furnished been inaccessible to your committee, but it has also been unable to learn the names of their depositors so as to ascertain the extent, if any, to which the funds of interstate corporations are being used in their transactions, or the character or extent of such transactions, or the manner in which the profits of these banks have been earned, or the character of their dealings with various security companies that are owned and operated in connection with certain of the largest of them.

Your committee has also been unable to ascertain from the great private banking houses, to which reference will hereafter be made, that are engaged in the issue and sale of securities of interstate corporations and act as their bankers and fiscal agents the names of those of such corporations for which they act as depositaries or the names of financial institutions that have underwritten such issues of securities.

It is thus seen that the refusal of aid by the comptroller, the failure of the Senate to pass the bill amending section 5241 of the Revised Statutes, and the lack of any authoritative decision by the courts sustaining its right to obtain access to the books of the national banks have seriously embarrassed your committee in its efforts to present a complete disclosure of the extent, if any, to which the resources of the leading national banks in the cities of New York, Boston, and Chicago have been or are being exploited in the interest of banking houses and others with which they are affiliated through

stock holdings, joint account, promotion, syndicate, and other financial relations and transactions.

For these reasons and because of the suspension of public hearings during the presidential campaign, and on account of the large number of important witnesses whom it was impossible to examine within the brief time remaining of the term of the present Congress, your committee has been unable to complete its investigations and has deemed it best to present this intermediate report, accompanied by the urgent recommendation that the incoming Congress continue the inquiry into the important subjects set forth in the resolutions.

In laying out its work your committee found that the clearing-house associations and stock exchanges, and particularly the New York Clearing House Association and the New York Stock Exchange, constituted integral and important parts of the financial system of the country and that no inquiry into the subjects dealt with in the resolutions could be made effective that did not include a study of their organization, methods, and operations—all of which have now been fully investigated so that our recommendation for a further inquiry does not apply to these branches of the subject.

The hearings, which had been resumed on December 9, 1912, continued through February 24, 1913, and your committee now presents a report of the facts brought out and of its conclusions and recommendations, taking up in the order named—

First, clearing-house associations;

Second, the New York Stock Exchange; and,

Third, the concentration of control of money and credit.

89

## PART II.—REVIEW OF THE EVIDENCE.

### CHAPTER FIRST.—CLEARING-HOUSE ASSOCIATIONS.

#### SECTION I.—GENERAL DESCRIPTION.

There are 242 clearing-house associations in the United States. Every large city and many of the smaller ones has its own organization. In thinly settled sections of the country an association frequently includes in its membership banks of the surrounding towns. (Cannon, R., 216.)

The American Bankers Association, composed largely of banks and trust companies in the clearing-house associations, has a department or committee the object of which is to secure uniform action by such associations throughout the country. 122 of them are members of that department. (Cannon, R., 216, 217; Pugsley, R., 560, 561.)

Such associations include in their membership State banks and trust companies, as well as national banks, and were originally organized for the very commendable and necessary purpose of furnishing a common meeting place in the locality in which the members conducted their business, where, at a given hour of every day, each member might meet all the others or their representatives and there present and receive payment of all checks held by the members against each other. Their function is to economize and facilitate the collection of checks by banks of the same community one from another. (Sherer, R., 136, 156, 157; Vanderlip, R., 274, 276; Hepburn, R., 302-304.)

The only business of the clearing house primarily—  
said Mr. Hepburn, president of the Chase National Bank—  
is the exchange of checks, which is a simple thing which takes a half hour in the morning and a half hour in the afternoon. (R., 302.)

A clearing house at one point has absolutely nothing to do with the collection by its members of checks drawn on a different point—"out-of-town" checks, as they are known. (Sherer, R., 136, 156, 157; Vanderlip, R., 274, 276; Hepburn, R., 302-304.)

Briefly stated, the process of "clearing" is as follows:

At the beginning of every business day each member presents at the clearing house all checks against other members deposited with it up to the close of business of the preceding day. Accounts are stated and in the afternoon every debtor member brings the amount due from it to other members to the clearing house, which on the same day pays it over to the creditor members. (Sherer, R., 129, 130.)

The advantage of this system over the archaic practice of each bank separately making its collections over the counter from every other bank is incalculable.

To illustrate: In 1911 checks to the amount of \$92,420,120,091.67, averaging \$305,016,897.99 daily, were collected through the New

York Clearing House Association. This required but half or three-quarters of an hour morning and afternoon and the use of but \$4,388,563,113.05 of actual money, averaging \$14,483,706.64 daily, thus requiring the exchange of but 4.7 per cent of the money that would otherwise be involved in these transactions. (Sherer, R., 114, 130; Hepburn, R., 302.)

To reduce the risk and labor of daily carrying through the streets large amounts of money necessary to pay the balances due from and to each other the members of the clearing-house association deposit with it coin and currency other than bank notes and in return receive certificates in stated denominations, payable to any member. These are used by members in settling with each other at the clearing house, but are not otherwise circulated. (Sherer, R., 132, 133; Vanderlip, R., 276, 277; Hepburn, R., 317.) It is claimed that their issuance is authorized by section 5192 of the Revised Statutes, which recognizes clearing-house associations and permits their certificates for specie or money deposited with them as reserve to be—

deemed to be lawful money in the possession of any association (national banking association) belonging to such clearing house by holding and owning such certificates within this section.

The membership of clearing-house associations is generally divided into two classes: (1) Full members—the proprietors; (2) qualified members (miscalled “nonmembers”), who for an annual fee are permitted to enjoy the facilities of the association through the agency of a full member, but who have no part in its management. Qualified members are, however, equally with full members, subject to the supervision and discipline of the association. (Sherer, R., 116, 121.)

It will thus be seen that the clearing house performs a most useful and important function in the financial system, if confined to its legitimate purpose. In the complex affairs of our great cities, with their numerous institutions and vast daily exchanges, the privileges of a clearing house are virtually a necessity and could not be dispensed with, if at all, without great waste and loss and serious impairment of the efficiency of the local banking system. So essential are their facilities that no large bank doing an active business of receiving deposits could conduct operations independently of the clearing house. In the principal cities, especially in the city of New York, these associations have become a power for good or evil.

## SECTION 2.—EXAMINATIONS OF MEMBERS.

As a rule, the associations are authorized to make the minutest examination into the affairs and condition of either full or qualified members. Applicants for membership must submit to a like examination.

Eight years or so ago the Chicago Clearing House Association instituted a system of periodical examinations of members, supplementary to the examinations of the Federal and State authorities. A chief examiner was appointed, with a staff of about a dozen men, who reported to the clearing-house committee. (Reynolds, 1644-1646.) A similar system has since been adopted by the New York association, which has a chief examiner with 12 examiners under

him, whilst the Comptroller of the Currency has only 2 to conduct the examinations of national banks in that same locality, where 29 of the 64 institutions in the clearing-house association are national banks, and where in addition there are 15 national banks not in the association. (Scherer, R., 131, 167-169.)

The clearing-house examiner is under the direction of the clearing-house committee, which generally consists of five members, and in fact controls all the operations of the association except the election and expulsion of members.

Comptroller Murray frankly admits that bank examinations by the Federal authorities are illogical, unscientific, and superficial (R. 1386):

Q. Don't you require a very much larger force to make a full and complete examination of the banks?

A. Oh, the whole question of bank examination is illogical, unscientific, and simply impossible under the present law.

Q. It is superficial under the present law?

A. Yes. No one has denounced that any harder than I have.

It further appears from Mr. Murray's testimony that the national-bank examiners exchange information as to the names of borrowers and other matters, not only with the State examiners but with the clearing-house examiners, so that the latter come into full possession of all information concerning the affairs not only of the national banks but of all State banks and trust companies, and the information, which is sacredly guarded by the comptroller as of so confidential a character that it can not be disclosed to your committee, is freely exchanged with the nonofficial examiners of an unincorporated clearing-house association. The State examiners and clearing-house examiners, as well as the national-bank examiners, have card indexes that locate banks' loans with the names of borrowers and the amounts borrowed, and these are exchanged. (R., 1389):

Q. Your examiners cooperate with them (referring to the New York Clearing House examiners), do they not?

A. I think they do.

Q. Have you no intimate knowledge of the method of cooperation between the clearing-house examiners and your examiners?

A. I know that my examiners in all clearing-house cities have general instructions to cooperate in a general way with the clearing-house examiners.

Q. In about the same way in which they cooperate with the banking departments?

A. In about the same way; yes.

Again (R., 1390):

Q. But you say you have given your examiners the same general instructions to cooperate with the clearing-house examiners and with the State banking departments?

A. Yes.

Q. That would involve, would it not, that they should get together in comparison of their card indices and in determination of the extent to which men were extended in their loans or commitments?

A. Probably I might, by taking a specific instance, give the committee a little information.

Q. If you will, we would be glad to have it.

A. For instance, in a city where we have a clearing-house examiner and a national-bank examiner, in order to avoid multiplicity of examinations, the clearing-house examiner often examines the bank with his force at the same time the national-bank examiner and his force are in. Now, the law authorizes the comptroller to force a bank to charge off its losses, a recent decision of the Supreme Court, when they are ascertained. The clearing-house examiner examines the same bank with the national-bank examiner at about the same time; there may be a question on certain

securities or on certain paper as to whether they are losses or not, and the bank examiners often confer on these difficult questions of losses, and the national-bank examiner will give the clearing-house examiner what his judgment of the losses in that bank is, and the clearing-house examiner, from his credit files and all the information which he has, will give the national-bank examiner his estimate of losses. They usually agree.

Q. That relates to commercial paper or to bonds or stocks or any class of securities?

A. To whatever they may have. They confer on the credit of the banks, and exchange information, and I presume exchange opinions as to whether or not certain loans are good or bad. They each have different channels of information. For instance, the national-bank examiner has 100 men he may write for information about a borrower, and the clearing-house examiner may have other lines of information which are closed to the national-bank examiner.

Again (R., 1392 :

Q. What is there in the position and office of those examiners, Mr. Murray (referring to the examiners for the clearing-house association), that is so much more sacred than your official examiners should be permitted to expose to them the affairs of your office, which they regard as confidential, even as against the courts of the land?

A. I think the cooperation between the clearing-house examiners and the national-bank examiners is just a question of credits of which both have full information.

Q. That is the most confidential part of your business, is it not—the question of credits?

A. Yes.

Whilst it does not affirmatively appear that the examiners employed by the clearing-house committee disclose to it the information obtained by them in the course of their examination, yet they are subject to the direction of the committee, and the power thus placed in its hands is unjust to the smaller banks, and to the nonmember banks that have no voice in the association, and is subversive of their liberty of action.

### SECTION 3.—EXCLUSION OF SMALL BANKS FROM MEMBERSHIP.

A bank or trust company with capital stock of less than \$1,000,000, though absolutely solvent and well managed, can not become a member of the New York Clearing House Association. It makes no difference that its capital and surplus combined exceed \$1,000,000. In order to enjoy the invaluable facilities of the clearing house, such a bank must engage a member bank as its clearing agent. (Frew, R., 577, 629, 630.) It is then virtually at the mercy of that bank, since the latter at any time may summarily terminate the agency, at its own election, or may be compelled to do so by the clearing-house committee. (Frew, R., 630.) The history of banking in New York City shows that the withdrawal from a nonmember bank of its privilege of clearing through a member has usually resulted in such loss of confidence as to compel the closing of its doors in times of stress, though the event may prove it to have been perfectly sound and solvent. (Frew, R., 631.) Were the bank a full member, it could not be thus summarily deprived of the privileges of the clearing house, but only through the orderly action of the association. (Frew, R., 632.)

The panic of 1907 started with the closing of the Knickerbocker Trust Co., which followed immediately after the announcement of the National Bank of Commerce of New York, the trust company's clearing agent, that it would no longer act as such. (Frew, R., 631, 632.)

The chairman of the clearing-house committee of the New York association admitted that it would have been a safeguard to the public had the Knickerbocker Trust Co. been a member of the association and not dependent upon the will of a single bank for clearing privileges. (Frew, R., 632, 633.)

No good reason has been adduced why small banks, if sound and well managed, should not be admitted to full membership in such associations. Admittedly it is just as safe to have as a member a small sound bank as a sound large one. The chairman of the clearing-house committee of the New York association said that personally he would not discriminate against small banks in this regard; that — it would be a very much better thing to have every bank that is well managed in the clearing house. (R., 629, 630, 634.)

In Chicago there is no requirement as to the amount of capital stock a member must have. Indeed, instead of denying membership to small banks and compelling them to clear through the large ones, the effort there has been to induce the banks which clear through others to become full members of the association. (Reynolds, R., 1643.)

#### SECTION 4.—THE POWER OF SUCH ASSOCIATIONS.

The enormous saving in time, labor, and use of money effected by the clearing house in the matter of collecting checks renders its facilities almost indispensable to banks of deposit in cities of commercial consequence. The manager of the New York association, Mr. Sherer, so testified (R., 129, 140, 141):

Q. But to inaugurate and conduct a bank on a large scale would be a practical impossibility in these times without clearing-house facilities, would it not?

A. It is a matter of opinion.

Q. You think it is a practical impossibility?

A. I think it is a practical impossibility, yes; but there are others who think it is not.

\* \* \* \* \*

Q. I thought you said some time ago, Mr. Sherer, that the clearing house was essential to the bankers?

A. It is essential to domestic bankers; yes.

As a result clearing-house associations in the great cities have acquired a power and position in the financial system so commanding that in any ordinary case a bank or trust company having the required capital which should be refused admission to or expelled from one of them would at once lose public confidence, with all that that means to such an institution.

The manager of the New York association admitted that—  
banks have closed up because the clearing house has withdrawn their privilege,  
and that—

the rumor that the clearing house privilege has been withdrawn \* \* \* is sure to  
cause a run on a bank. (Sherer, R., 142, 143, 166.)

In October, 1907, two Brooklyn banks, so-called nonmembers of  
the New York association, clearing through the Oriental Bank, a full  
member, were compelled to close their doors within a day after the  
privileges of the association had been withdrawn from them. This  
incident is thus described in the testimony of the then president of  
the Oriental Bank (Jones, R., 236, 239):

A. I should say about the 20th to the 22d of October I met the clearing house  
committee in answer to their request.

Q. Who was with you?

A. No one.

Q. Where did you meet them?

A. At the clearing house.

Q. Whom did you meet?

A. I do not remember the committee. I only remember several on the  
committee, Mr. Woodward, Mr. Nash, and Mr. Townsend were there. These are  
the only members of the committee I recall.

Q. Did you meet Mr. Hepburn at that time?

A. I do not positively remember whether he was at the meeting or attended  
at that time or not. I remember the other three gentlemen were there.

Q. Did you apply for certificates?

A. Not at that time.

Q. What was your errand at that time?

A. I was asked what banks we were clearing for.

Q. What did you say?

A. I told them we were clearing for three—the Brooklyn Bank and the  
Borough Bank, both of Brooklyn, and the Chelsea Exchange Bank of New York.

Q. What took place?

A. They inquired about banks and their condition and the balances which  
they were maintaining with us, and they first said to me that they would prefer  
that I would send notices discontinuing the clearances.

Q. For all of them?

A. For all of them.

Q. Proceed.

A. Then the matter was discussed.

Q. What did you say as to that?

A. I said I felt if we did it would probably result in a large loss of business  
to us, and possible trouble.

Q. Did you say it would ruin the bank?

A. I do not know that I did. I felt that it would make trouble if we did  
send out the notices, and I protested against it. Finally my understanding was that  
if the Brooklyn Bank and the Borough Bank would bring their balances up to \$500,000  
each we might continue to clear for them, and if not that it was a matter to be reported  
against. I was to get in touch with the clearing house.

Q. Did they bring their balances up?

A. One of them did. The other approximated the balance, but not fully  
up to the \$500,000.

Q. Which one brought the balance up to \$500,000?

A. I think it was the Brooklyn Bank.

Q. What happened then?

A. The next day I had a visit from Mr. Townsend asking if I had sent out  
the notices and I told him I had not; that I understood that if the two banks men-  
tioned brought their balances up we would not have to send out the notices. The  
requirement did not apply to the Chelsea Exchange Bank. He said that was not his  
understanding. He went down to the clearing house, and I got a call to come down  
again, and the matter was discussed. It was decided that I should send out the  
notices.

Q. What were the notices?

## 24 REVIEW OF EVIDENCE ON CLEARING HOUSE ASSOCIATIONS.

A. To discontinue clearing for the Brooklyn Bank and the Borough Bank—not the Chelsea Exchange, however.

Q. You were to discontinue for the one that had brought its balance up to the required amount?

A. Yes.

Q. Did you say anything to that?

A. I told them that they had large balances with us, and I knew it would mean the withdrawal of those balances immediately and I felt that it would mean trouble for us, and I asked that a committee be appointed to examine our bank.

Q. Was there a committee appointed?

A. There was.

Q. You had not sent out the notices then, had you?

A. No, sir.

A. They (the clearing-house committee) said it [the Oriental Bank] was in good condition; that we were doing a legitimate business and not being used or abused by anybody.

Q. What was the upshot of that, as to whether you could continue to clear for the two other banks?

A. We discontinued that immediately.

Q. They told you to stop it, did they?

A. Yes.

Q. And did you send out the notices?

A. We did.

Q. And did they tell you that same night to discontinue clearing for those banks?

A. That afternoon, prior to the examination.

Q. What is your answer?

A. They told us that that afternoon prior to the examination.

Q. Before the examination?

A. Yes, sir.

Q. And you sent out the notices?

A. I did.

Q. And how soon after that did those two banks close?

A. I can not tell you exactly, but within a day or two.

The possible ends for which clearing house associations might use their great powers is further suggested in the following excerpt from the testimony of Mr. Cannon (R., 259, 260):

Q. Mr. Cannon, I would like you to look at page 12 of this very enlightening book of yours and tell me what you mean by this. Referring to times of panic, you say:

"In such an emergency the other members of the clearing house are usually willing to render assistance until the strain is relaxed. To secure such aid, however, a bank must be sound in its management and of good repute in every respect. Otherwise the members of the clearing house"—

This is all in times of panic, mind you—

"are likely to decline assistance, being quite willing to get rid of a weak and ill-managed member."

A. I think that speaks for itself.

### SECTION 5.—SUCH ASSOCIATIONS UNINCORPORATED AND UNREGULATED.

Yet, without exception, it is believed such associations sustaining this vastly important and delicate relation to the financial arrangements of the country, are unincorporated, voluntary organizations, on the same legal footing as private clubs, and as such subject only to the authority of their own governing body as regards the right to become or remain a member or to enjoy the privileges of membership. For example, under the constitution of the New York Clearing House

Association, which is fairly representative, a bank or trust company, no matter how well qualified, can not be admitted over the objection of one-fourth of those already members, who are its competitors, and on the other hand may be expelled by a majority vote; and in neither case need any reason be given nor is there any appeal. Nor, without the assent of the association can there be any change in the ownership, management, or charter of a member on pain of expulsion. Mr. Sherer, manager, and Mr. Cannon, member of the governing body, of this association, testifying as to its power in this regard, said among other things (Scherer, R., 112, 113, 145, 146):

Q. Assuming that it has all of those qualifications, the admissions committee is the sole judge of whether it will admit a member, is it not?

A. Yes.

Q. Having all those qualifications, it can be rejected or admitted in the judgment of the association, can it not?

A. Yes.

Q. And it requires the affirmative votes of three-fourths of the members to admit a member, does it not?

A. Yes, sir.

Q. And a majority to expel a member?

A. Yes.

Q. The majority may expel a member without cause, may it not?

A. No, sir. The constitution states what reasons are required.

Q. Yes. As a matter of fact, Mr. Sherer, the power of expelling or suspending a member rests entirely in the committee of this association, does it not?

A. Yes.

Q. Why do you constantly compare the membership in this association to that in a private club?

A. Merely for the sake of comparison, because it is not a corporate institution.

Q. You know that in the case of a private club a man may be excluded without reason, because they do not want him?

A. Oh, yes.

Q. And that is so in your association, too, is it not?

A. We do not go as far as that.

Q. But you have the right to do so?

A. We have our requirements here.

Q. You have the right to do so, have you not?

A. Yes, we have the right; not the moral right, if they comply with these requirements.

Q. You have taken the legal right, have you not?

A. Yes.

Q. You spoke of a man not wanting to come in. I shall have to repeat my question to you in that respect.

You know that unless the bank happens to have \$1,000,000 in capital it can not come in, can it? That is right, is it not?

A. That is right.

Q. And if it has \$1,000,000 of capital and it does not suit three-fourths of its competitors that it shall come in, it can not come in anyway, can it?

A. No.

Q. And if it does not suit its competitors who are in the association to let another bank that is a member of the association clear for it, it can not get clearance, can it?

A. No.

Q. We are talking about the constitution of the clearing-house association, and we are discussing section 7. Do you or not understand that under section 7 no bank can change control if it is a clearing-house member, and remain a clearing-house member, without the consent of the clearing-house committee? That is so, is it not?

A. Yes.

Cannon (R., 226):

Q. Do you not know that under your present constitution and by-laws a banking association that is eligible has not the right to membership and that its right depends upon the consent of three-fourths of the existing members?

A. Upon a vote of three-fourths of the existing members?

Q. Yes; you know that, do you not?

A. Sure.

Thus what may be virtually the power of life and death over our banking institutions rests uncontrolled in private hands.

#### SECTION 6.—USURPATIONS OF POWER.

A further criticism of clearing-house associations must be made. As will now be shown, they have assumed functions wholly foreign to their original object as above set forth, and at variance, we think, with the public interests.

#### SECTION 7.—ISSUANCE OF CIRCULATION.

At times of extreme stringency in the money market, notably in 1893 and 1907, they have issued to members without authority of law, on the security of their assets, so-called loan certificates, which without payment of the circulation tax of 10 per cent, passed as currency in some cities, as in New York, only amongst the members to pay balances at the clearing houses, but in others amongst the general public as well. (Sherer, R., 133-135; 184-188; 190-192; Cannon, R., 343-345.) In 1907 upward of \$250,000,000 of such certificates were issued; \$101,000,000 in the city of New York alone from October 26 to December 26, 1907. (Sherer, R., 191; Cannon, R., 345.) The form of certificate of the New York Clearing House Association was as follows:

No. ———,	FIFTY THOUSAND DOLLARS.	\$50,000.
	LOAN COMMITTEE OF THE NEW YORK CLEARING HOUSE ASSOCIATION, New York, ———.	

This certifies that the ——— has deposited with this committee, securities in accordance with the proceedings of a meeting of the association, held October 26, 1907, upon which this certificate is issued. This certificate will be received in payment of balances at the clearing house for the sum of \$50,000, from any member of the clearing house association.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Committee.

On the surrender of this certificate by the depositing bank above named, the committee will indorse the amount as a payment on the obligations of said bank, held by them, and surrender a proportionate share of the collateral securities held therefor \$50,000.

(On back): Pay only to any member of the New York Clearing House Association.

It is contended that such unauthorized additions to the circulation were the only available means of relieving without dangerous delay a very acute money stringency attended by panic.

It is nevertheless true that such issues involve a partial suspension of specie payments, which is humiliating if not actually injurious to the credit of the country. (Hepburn, R., 302, 303.) In the absence of governmental control, as at present, they also place a dangerous power in the hands of clearing-house associations, which determine to whom the certificates shall be issued and when they shall be retired. As the associations in this regard act through small committees, a bank will often find the decision upon its application for assistance resting with its keenest competitors, with no right of review.

Thus, in the panic of 1907, the Mechanics & Traders Bank, a member of the New York association, with deposits around \$12,000,000, was compelled, like many banks in good standing, to apply for aid in the way of clearing-house certificates. The granting or refusing of such aid as well as the calling in of any certificates which might be issued was in the hands of a consolidated committee consisting of the regular clearing-house committee and a special loan committee, each consisting of five members. The chairman of the first was Mr. Nash, then president of the Corn Exchange Bank, and Mr. Frew, a member of the second committee, was vice president of the same bank, which was an active competitor of the Mechanics & Traders, the two having branches near together in three localities in New York.

The Mechanics & Traders applied for and obtained clearing-house certificates to the amount of \$2,100,000, giving collateral having a face value of \$6,373,252.52. Subsequently, on January 25, 1908 (Mr. Woodward having succeeded Mr. Nash in the meantime as chairman) the Mechanics & Traders and three other banks were notified by the clearing-house committee that these outstanding certificates must be retired within a certain time. The notice was published in the newspapers and a run on these banks ensued, resulting in their closing. Within 40 days thereafter the Mechanics & Traders Bank paid its indebtedness to the clearing-house association in full. Several years later the Corn Exchange Bank took possession of one or more of the branch banking offices of the defunct Mechanics & Traders Bank. (Frew, R., 589-594.)

We do not for a moment intimate that Mr. Nash or Mr. Frew, as arbiters of the application of the Mechanics & Traders Bank, could have had any thought of gaining an advantage for their own bank over its competitor. But as a matter of general policy such a situation should be avoided. It is not fair or wise that either party should be so placed.

Again, the Oriental Bank of New York, long established, of excellent reputation and absolutely solvent, and other banks of that city that claimed to be solvent and paid their depositors in full in liquidation besides leaving a large surplus for their stockholders, were forced to close and go out of business in 1908 by reason of the mistaken exercise of the power to compel retirement of such certificates by the clearing-house committee of the New York association. (Sherer R., 194-199; Beekman, R. 264-267; Hepburn, R., 30.)

Mr. Hepburn, chairman of the board of directors of the Chase National Bank, a leading member of the clearing-house committee at that time, testified as follows regarding this important incident (R., 300, 301):

Q. And when everything was easy and money was cheap, and everything was quiet, and after you had left, did you learn that the first notice this bank the (Oriental) and

three other banks had that their certificates were to be called in was an announcement in the newspapers?

A. I learned—

Q. That is the question.

A. Did I learn that the first notice they had was in the newspapers?

Q. Yes, and before they even got the letters?

A. Yes, I heard that.

Q. And that they did not receive a notice giving the announcement until the day after it appeared in the newspapers, the morning after?

A. I do not know anything about it; I am not testifying to that.

\* \* \* \* \*

Q. Would it have happened if you had been here?

A. The sending out of that notice was a mistake.

Q. And the withdrawing of it after it was published did not help any?

A. It was a mistake.

Q. But it did not help it any when the people had begun to draw on the banks?

A. No.

Q. Do you not think they ought to have gone along and helped the banks out, after that, which were solvent?

A. Certainly.

Q. The whole thing was a sad mistake, was it not?

A. It was.

\* \* \* \* \*

Q. It was a very ill-advised blunder to let this thing go the way it did, was it not, to say the least?

A. It was a mistake.

#### SECTION 8.—REGULATING CHARGES FOR COLLECTING OUT-OF-TOWN CHECKS.

Ninety-one clearing-house associations, including those in nearly all the larger cities, require members to charge a specified rate, uniform in each association, for collecting out-of-town checks, except those drawn on banks at certain-named points. (Cannon, R., 217, 218.) In the New York association, which is typical of this class, the penalty for the first violation of the rule is a fine of \$5,000, and for the second, expulsion. (Sherer R. 137, 142.)

The remarkable feature about this regulation is that clearing houses have nothing to do with the collection of out-of-town checks. But since banks in a large city, practically speaking, unless of exceptional strength, must have use of the facilities of the clearing-house association in that city in paying checks drawn on each other, and hence can not risk expulsion therefrom, they are compelled to submit to its dictation on a question of business policy entirely outside its province and with which it has no concern. They may wish to collect out-of-town checks free of charge as a means of drawing patronage. Or they may be satisfied from experience that there is ample compensation for this service in the use of a customer's money, and hence may not wish to make a special charge for it. Or they may believe that the prescribed rate is exorbitant. Yet they can not act according to their own business judgment or treat one customer differently from another on this subject. They can not choose the course which they deem most to their advantage. They are not even consulted as to whether they desire to enter into such a combination,

fixing for them the course they shall adopt. If they are "nonmembers," so called, they have not even a vote or representation in the association which enacts these regulations and requires obedience thereto under penalty of withdrawing from an offender the privilege of clearing through a member of the association. Their business in this important feature is not under the control of their own officers, directors, and stockholders, but of an outside agency—the clearing-house association—which prescribes for them what they may and may not do in the conduct of their business in this important particular. If they want to compete for business by offering inducements to a valuable customer they are denied the opportunity.

The regulation is defended on the ground that something had to be done to stop the "losses" sustained by banks in performing this service. It is not claimed that they were losing money on their business as a whole or on the business of any customer for whom they had been performing this service without compensation before the enactment of this rule. On the contrary, it is undisputed that they were making large profits and paying large dividends at the same time that many of them were collecting out-of-town checks free and all were at liberty to charge as little as they pleased; and that in a number of prominent cities, including Philadelphia, Providence, Newark, Jersey City, Albany, and Troy, among them, no charge is imposed, and in Boston only a small fraction of that imposed in New York. (Frew, R., 615, 618-620.)

But it is claimed that if this particular feature of a bank's business be segregated from all the rest, setting against the revenue from the use of the money collected a proportionate part of the general expenses of the bank, rent, salaries, stationery, etc. (and without taking into account the profit derived by the banks from the use of the customers' balances on deposit), a loss will be shown. Your committee is unable to subscribe to the accuracy of the figures and deductions on which that contention is based. If the experience of the Boston banks in making their collections in New England is a fair criterion on which to base an opinion (although that covers only collections throughout New England and involves less loss of interest to the banks) the existing charges imposed by the associations of many other cities, including New York, permit of a very handsome margin of profit from this branch of the business. Mr. Sherer at first estimated the revenue of the members of the New York association from this service at \$50,000,000. The following day, after communicating with the then chairman of the clearing-house committee, he reduced this estimate to \$17,000,000. These figures were subsequently challenged, however, by the newly elected chairman, Mr. Frew. (Sherer, R., 153, 171-174, 182.)

The calculations on these lines finally submitted in the form of a report by a committee of the New York association are rendered of little value by the practical impossibility of determining with any degree of accuracy what part of the total expense of operation was incurred in this particular service, and by the fact that they included only a given number of selected banks.

Moreover, when analyzed, the contention comes to this, that for every expense incurred by banks they are entitled to require, and by combination to compel each other to require, under penalty of expul-

sion from the clearing house, specific reimbursement by their customers, no matter how much money they are making out of the use of such customers' deposits. With equal justice it may be argued that rent and clerk hire shall be charged against every depositor so that all the earnings from his balances will be profits.

All this, however, is beside the point. Acting separately, banks have a right to charge for this service if they do not find, as many of them formerly did, adequate compensation in the use of the customer's money, or if they care to take the risk of losing business in the attempt to secure greater profits.

But as we have seen, clearing-house associations perform no office whatever in the collection of out-of-town checks, and therefore for them to deny their facilities in order to coerce banks to charge a uniform rate for collecting such checks is an abuse of their powers prejudicial alike to commercial intercourse and to the interests of the banks themselves taken as a whole.

It should be left to the contracting parties, the bank and its customer, and not to an outside agency by brute force of its power over the bank, to determine what service the bank shall perform in return for the use of its customers' money.

During the progress of this inquiry, in December, 1912, the New York Clearing House Association modified its rules for the collection of out-of-town checks by increasing the number of so-called discretionary points—that is, of cities and towns on which checks drawn might be collected by its members without charge, but still retaining the rule as to all other places and still insisting upon its right to enforce the rule as thus modified against all members and nonmembers.

#### SECTION 9.—ENFORCING UNIFORM RATES OF INTEREST PAID ON DEPOSITS AND CHARGED ON LOANS AND UNIFORM RATES OF EXCHANGE.

A smaller number of such associations, not including that of New York, have attempted by like means, under penalty of expulsion, to force upon their members uniform rates of interest on deposits and uniform rates of exchange. These practices are wholly foreign to the legitimate function of clearing houses and are condemned by the manager of the New York Clearing House and by leading bankers. (Sherer, R., 158; Cannon, R., 217, 218, 259, 260; Vanderlip, R., 275, 278, 279; Frew, R., 625, 626, 628, 629.)

Mr. Sherer, manager of the New York Clearing House Association, testified as follows (R., 158):

Q. \* \* \* May I call your attention, in connection with the subject we are now discussing, to a certain statement on page 13 of this valuable book of Mr. Cannon's on clearing-house deposits? It reads as follows:

"Another of the special functions of a clearing house is the fixing of uniform rates of interest on deposits and in a few instances on loans."

Do you agree to that?

A. No; I do not.

Q. No. You think that is quite outside the functions of a clearing house?

A. Yes.

Mr. CANNON, president of the Fourth National Bank of New York, and a recognized authority on clearing houses, said (R., 218):

Q. So you could not tell us how many clearing-house associations to-day attempt to regulate the interest that shall be payable, by the banks, members of the association, on deposits?

A. I could not.

Q. Do you not think that is a very vicious practice?

A. I do.

Q. You know it is contrary to law, do you not?

A. Certainly. We have never attempted it in this association.

Q. Or can you furnish us a list of the associations that are regulating or attempting to regulate interest on loans?

A. I can not furnish any further information on that than is given in the book.

Q. That you regard as a vicious thing, too, do you not?

A. Yes.

Q. And clearly contrary to law?

A. Yes.

Mr. Vanderlip, president of the National City Bank of New York, said (R., 278):

Q. You know that Mr. Cannon is a very eminent authority on the subject, do you not?

A. Undoubtedly.

Q. And his work is considered standard, is it not, with respect to clearing houses?

A. It ought to be, considering his eminence.

Q. On page 13 of his book on clearing houses he says:

"Another of the special functions of a clearing house is the fixing of uniform rates of interest on deposits and, in a few instances, on loans."

Do you agree that the fixing of uniform rates of interest on deposits is a special function of a clearing house?

A. I should not think it was.

Q. And the fixing of interest on loans in any instances?

A. I should not so regard it.

Mr. Frew, chairman of the clearing-house committee of the New York association, said (R., 628):

Q. But if you conclude some day that you want to limit the interest that you will pay your customers on their accounts you will do it by the same process by which you imposed this charge, will you not?

A. We would not do it; there is no doubt about that.

Q. But you do not know what you may do next year, do you?

A. The history of the clearing house warrants me in stating that we never would do any such thing as that.

Q. Do you not know that there are clearing houses in the country that do?

A. Yes; I do. I think it would be wise to stop them from doing it, probably.

#### SECTION 10.—SALT LAKE CITY AND PITTSBURGH ASSOCIATIONS.

The usurpation by clearing-house associations of the powers vested by law in the officers and directors of banks has reached its perfect development in the constitution of the new Salt Lake City association, and in proposed amendments to the constitution of the Pittsburgh association not yet adopted only because dissenting members have interposed with legal proceedings.

The new Salt Lake City association grew out of the refusal of one member of the old association—the National Copper Bank—to accept an amendment to the constitution regulating the payment of interest on deposits. Being doubtful of their power to expel the recalcitrant member the other members of the old association with-

drew and organized a new association, investing it not only with power to regulate the rates for collecting out-of-town checks, the rates of interest on deposits, and the rates of exchange, but also such matters as the hours for opening and closing and even the amounts that should be charged for check books. Indeed, but little was left to the directors of the member banks except the execution of the rules of the clearing-house association. The National Copper Bank remains the sole member of the old association. As a matter of form it was invited to join the new association, but refused because of the character of the constitution adopted. It is thus deprived of the facilities of the clearing house because it is unwilling to surrender control of its affairs to an outside body. (Armstrong, R., 1215-1228.)

The Pittsburgh association, under the proposed amendment to its constitution, would have power—

To regulate exchanges, fix rates to be charged on drafts and collections, regulate the payment of interest upon deposits, and generally to take such action in matters of common interest arising, or affecting their relations with each other, and with other banks in this and other localities as will tend to the fostering and promoting of sound and conservative methods of banking, and

To make rules and regulations for the conduct and supervision of members and non-members clearing through members and provide for the imposition and enforcement of penalties for the violation of such rules and regulations. (Knox, R., 546.)

As construed by Vice President Knox of the Mellon National Bank of Pittsburgh, this power would embrace the determination of to whom, for what amounts, and on what collateral loans should be made by members. (Knox, R., 547.)

## CHAPTER SECOND.—THE NEW YORK STOCK EXCHANGE.

### SECTION I.—GENERAL DESCRIPTION.

A stock exchange is a market, controlled by rules, where securities consisting chiefly of the stocks, bonds, and other securities of corporations are bought and sold. Manifestly, a security privileged to be bought and sold on such an exchange obtains a wider market and a more definite current value than one which is not. It may be said, therefore, that the true function of such an exchange is—

- (a) To furnish the widest possible market for securities, and
- (b) To register with greater definiteness their current value.

The New York Stock Exchange is the primary market for securities in the United States and as such is a vital part of the financial system. (Mabon, R., 373; Pomroy, R., 474.) In the past decade the average annual sales of shares on that exchange have been 196,500,000, at prices involving an annual average turnover of nearly \$15,500,000,000; and of bonds \$800,000,000. (Sturgis, R., 825.)

Quotations on its floor determine the current values of all securities there traded in, which means the securities of all the greater corporations of the country. (Ely, R., 332.) Such quotations are adopted by the courts and by the Comptroller of the Currency as measures of value, and upon them banks base the amount to be lent on a given security. (Ely, R., 332; Sturgis, R., 837; Murray, R., 1393.)

The business conducted upon this exchange is not only nation wide, but international in its scope. Its members maintain private wires to all the principal cities of the United States and the transactions conducted by its members are for the account of customers from all parts of the country and from foreign countries.

A special committee on speculation appointed by Gov. Hughes, reporting in 1909, referred to this exchange as "to-day probably the most important financial institution in the world." If that be true, membership in such an institution should be an office of distinction and public usefulness.

It is a voluntary, unincorporated association, with a written constitution. Its chief functionaries are a president, a secretary, a governing committee, a law committee, a committee on admissions, a committee on arrangements, a committee on stock list, and a finance committee. The governing committee is its principal organ of administration. Its membership is now limited to 1,100, which, under the constitution, can only be increased by the governing committee. There has been no increase in this limitation since 1879, although the volume of sales has grown from 75,000,000 shares and \$413,000,000 of bonds in that year to 129,324,169 shares and \$664,942,420 of bonds in 1912; and the number of listed securities, as roughly estimated by a high official of the exchange, is fifty times greater now than at that time. One can become a member only by admission to a vacancy (should there be any), or by

purchase of an existing membership, and then only with the approval of two-thirds of the committee on admissions. The price of a membership has been as high as \$95,000; to-day it is about \$50,000. The initiation fee is \$2,000; dues are \$100 a year. (Ely, R., 318, 319, 331, 333, 334; Sturgis, R., 783, 784.)

On the floor of the exchange there is for each security a "stand" at which transactions therein take place; also a "stand" where loans are negotiated. (Mabon, R., 404; Thomas, R., 359.) The exchange keeps no record of sales or loans, although it exclusively controls the collection and distribution of all records of transactions and quotations of securities upon the floor. (Thomas, R., 361; Mabon, R., 464; Sturgis, R., 802-806.)

Between buyer and seller, however, a ticket is exchanged showing that one has bought and the other sold. (Mabon, R., 464.) At the loan stand there is an unofficial bulletin on which is entered the amount and rate of interest of loans for the first half or three-quarters of an hour after the lending begins—usually about 11 o'clock. The average of the opening, the high and the low rate of these recorded loans fixes the rate for the day. And each day a slip is posted showing the opening, the high and the low rate of the day before. (Griesel, R., 743; Turner, R., 753-756.)

As no complete record is kept, the amount loaned on the floor of the exchange in a day can not be definitely stated. One of the leading brokers estimated the amount at not more than \$50,000,000, and often much less. (Turner, R., 754.) The chief lenders are the National City Bank, the National Bank of Commerce, the Chase National Bank, the Hanover National Bank, J. P. Morgan & Co., and Kuhn, Loeb & Co. (Griesel, R., 744-746.) Such loans are mainly payable on demand and are made upon collateral that is listed on the exchange. (Turner, R., 756.) This loan stand constitutes the only open market for the lending of money in the United States. Most of the loans made to stock exchange members are, however, negotiated directly between the banks and the brokers at the offices of the banks and not at the loan stand of the exchange.

The stock exchange building is owned by a corporation, all the shares of which are held by the exchange. An office in the building is rented to the Western Union Telegraph Co. (Ely, R., 337; Sturgis, R., 802.)

The exchange owns the entire stock of the New York Quotation Co., which, for a specified rental, supplies members' offices south of Chambers Street, New York City, with a ticker service. For \$100,000 a year, under a contract terminable upon one day's notice, it sells the quotations to a subsidiary of the Western Union, the Gold & Stock Telegraph Co., which also maintains a ticker service. The latter, however, can supply the quotations to such persons only as the exchange approves, and under no circumstances to members' offices south of Chambers Street or to any competing exchange in New York City. The quotations are gathered from the floor of the exchange and transmitted by its own employees to the offices of the New York Quotation Co. and the Gold & Stock Co. and thence distributed throughout the United States, but the exchange retains the right to determine who shall and who shall not receive these quotations. (Sturgis, R., 802-806.) There is no other method by which quotations of transactions on the exchange are obtainable.

Telephone communication leading from the building in which the exchange is located is not enjoyed by members as of right, but may be denied in the discretion of the committee on arrangements; and any member furnishing such communication to another member to whom it has been denied is subject to suspension. (Ely, R., 335; Mabon, R., 396, 397.)

A member can not be a member of any other exchange in New York on which any securities are dealt in that are listed on this exchange. (Mabon, R., 402, 403, 455.)

## SECTION 2.—STOCK EXCHANGE CLEARING HOUSE.

In 1892 there was established a clearing house to act—

as a common agent of the members of the exchange in receiving and delivering such securities as may from time to time be designated by the clearing-house committee.

Upon written application approved by the committee a member becomes entitled to make use of the clearing house, but in settlement of transactions in only those stocks designated by the committee as privileged to be "cleared." (Streit, R., 864.)

The process of clearing, briefly stated, is as follows: For each sale during the day a ticket showing buyer and seller and the number of shares sold is given to the buyer who sends it to the clearing house, which balances the purchases of each member against his sales; and the members who have bought more shares of a given stock than they have sold receive from the clearing house orders for the difference upon designated members who have sold more than they have purchased. Thus if A on a certain day has sold 8,000 shares of Union Pacific and bought 10,000 shares, he receives from the clearing house an order for the delivery of 2,000 shares directed to some particular member or members who sold at least that many more shares than he purchased on that day. No certificates of stock are ever received or delivered by the clearing house. Obviously, this system of "clearing" promotes speculation beyond what it would be if delivery had to be made of certificates for the full number of shares bought and sold. (Streit, R., 864-866.)

## SECTION 3.—MEMBERS PREFERRED CREDITORS.

In case of the insolvency of a member his obligations to other members take precedence over even the claims of a customer who has been defrauded, so far as the exchange can control the matter by impounding the proceeds of his membership seat for the benefit of creditor members to the exclusion of other creditors until the claims of members have been paid in full. (Mabon, R., 463, 464; Sturgis, R., 786-789.)

## SECTION 4.—PROCEDURE FOR LISTING.

To obtain the listing of a security upon this exchange, the issuing corporation must make written application to the committee on stock list showing in detail its condition and affairs, and accompanied

by a form of stock certificate or of bond and mortgage or other security, as the case may be, and a check for the listing fee—\$50 for each \$1,000,000 par value of the issue. (Ely, R., 323, 324; Mabon, R., 409, 413.) It must also appear, among other things, that the corporation has a transfer agent and registrar in New York City, regardless of the place of organization or location of the business of the corporation; that the stock certificate or mortgage or other security, is in a form satisfactory to the committee on stock list and contains certain provisions required by the exchange; and that the stock certificates or bonds or other security as the case may be, were engraved by a company approved by the governing committee (Ely, R., 325, 325; Mabon, R., 409, 410, 414.) There are other conditions of less importance. All are set forth in the record. (Ex. 24, pp. 338-342.) The committee on stock list, after ascertaining whether the application meets the requirements, makes a recommendation in the premises to the governing committee, which makes the decision. (Ely, R., 323, 324.) A schedule of listed securities is furnished members daily. (Ely, R., 336.)

#### SECTION 5.—THE VALUE OF LISTING.

Listing on the New York Stock Exchange gives a security a wider market and a more definite current value, making it easier to sell and easier to borrow upon. In fact, securities are not generally available as collateral for stock-exchange loans unless they are listed. As stated, banks accept the quotations on this exchange as the basis for computing how much they will lend upon given securities, the practice being to value the securities at 10 points below the quotations and lend 80 per cent of such valuation. (Mabon, R., 371, 466; Pomroy, R., 473, 474, 483; Turner, R., 756.)

That such listing, therefore, adds very materially to the value of a security was testified to by Mr. Mabon and Mr. Pomroy.

Mabon (R., 371):

Q. So that you realize, do you not, the importance to the security of a company and to its value of having its stock listed on the regular list of the stock exchange?

A. In the main, I do; yes.

\* \* \* \* \*

Pomroy (R., 473):

Q. You do not question the great value of a listing of a stock on the exchange, do you?

A. Oh, no, sir.

Q. You know it makes it available as collateral?

A. Certainly.

Q. And that gives it a salability and a ready market?

A. More salability and a more ready market than if it were not listed on the exchange; yes, sir.

That this is the general view is shown by the fact that out of many millions of securities put out within the last five years by the great interstate corporations, the only issue not listed on the New York Stock Exchange, according to the recollection of its president, was one of short-term notes of the Erie Railroad amounting to \$10,000,000; and by the further fact that in advertisements and circulars describing securities offered for sale it is always stated as an inducement to purchasers that they are listed on the New York Stock Exchange when such is the case. (Mabon, R., 410, 413.)

## SECTION 6.—UNLISTED DEPARTMENT.

Until 1910, when it was abolished, the New York Stock Exchange maintained a so-called "unlisted" department, where dealings were permitted in securities of corporations refusing to furnish any substantial information as to their business and which therefore could not be admitted to the regular list. Such securities appeared in the same table with those regularly listed and were differentiated from them only by a star in front. (Mabon, R., 362, 368.) In this manner such active stocks as those of the Amalgamated Copper and the American Sugar Refining Cos. were dealt in on the exchange for many years without the public having any information regarding their affairs. (Mabon, R., 362, 366, 367, 379, 383.) They were in effect conducted and maintained as "blind pools." Those in control were thus enabled more freely to use their information for speculative purposes.

## SECTION 7.—THE CONSOLIDATED EXCHANGE AND THE CURB.

There is also in New York a much smaller market for securities known as the Consolidated Stock Exchange, which is incorporated, and a market called the "Curb" for securities not listed on the New York Stock Exchange.

## SECTION 8.—BOYCOTT OF CONSOLIDATED EXCHANGE.

The last named wages bitter warfare against the Consolidated for no other apparent reason than that the latter is a competitor. It has adopted and rigidly enforces a rule prohibiting any business transactions between its members and members of the Consolidated, and any communication by telegraph, telephone, messenger, or otherwise, directly or indirectly, between the places of business of its members and the places of business of members of the Consolidated. (Ely, R., 326; Mabon, R., 388.) Following the adoption of this rule members of the Consolidated Exchange having accounts with the New York Stock Exchange were required to close them out. (Heim, R. 756; Ober, R. 776; Dietz, R. 779; Jarvis, R., 780.) A member violating the rule is punished by suspension, usually for one year, during which time neither he nor his partners, if any, can execute orders on the exchange nor employ other members to do so and divide the commissions. (Ely, R., 327; Mabon, R., 388, 389.) So far-reaching is this prohibition that a member of the Consolidated Exchange owning securities listed only on the New York Stock Exchange could not sell them there, and therefore would be without a market except by private sale. (Ely, R., 329-330; Mabon, R. 386.) The president of the New York Stock Exchange admitted that the purpose of the rule is to drive the Consolidated out of business (Mabon, R., 387):

Q. Do you not regard that as a most oppressive and unjust rule?

A. I do not.

Q. How do you justify it? You are the president of the stock exchange. We would like to know how you justify it.

A. I justify it by the fact that the Consolidated Exchange is an organization that is a rival organization of our own, and this is a business that we have and is a business that we should be able to keep. I do not see any reason why we should not strengthen our institution as much as we can.

Q. But do you not keep all that business when your own listed stocks are sold on your own exchange through your own brokers?

A. What business?

Q. The business to which you refer. It does not take any business away from you, does it, for a member of the Consolidated Exchange to sell through your exchange stocks that are not listed on his exchange; but it gives you business, does it not?

A. Yes.

Q. And your refusal to take it really takes away business, does it not?

A. Yes.

Q. But you are willing to take away business, you are willing to drive away business, are you not, in order to prevent a man who is a member of another exchange from doing any business at all, and to drive him out of business?

A. Yes.

The committee can find no justification for the methods adopted by the New York Stock Exchange to exterminate its weaker rival.

#### SECTION 9.—CONDITIONS ON WHICH STOCK EXCHANGE MEMBERS MAY TRADE ON THE CURB.

Members of the New York Stock Exchange may engage in transactions on the "curb" so long as no issue of securities dealt in on the former is allowed to be dealt in on the latter. When an issue theretofore dealt in on the "curb" is listed on the New York Stock Exchange, trading therein on the former must cease, or reprisals from the latter may be expected. (Mabon, R., 460-462.) Some of the more important mining shares have recently been so transferred from the one market to the other. (Mabon, R., 461.) The "curb" lives by the mere sufferance of the exchange, and only so long as it meekly permits to be taken from it such business as the exchange concludes to take unto itself.

#### SECTION 10.—THE ENGRAVING MONOPOLY.

As stated, one of the requirements for listing is that the stock certificate or bond must be engraved by a company approved by the governing committee. (Ely, R., 326.) This is so even as regards government and municipal bonds. (Mabon, R., 391.) Indeed, the bonds of the city of New York are denied listing because not engraved by a company so approved. (Mabon, R., 391.) Observe that it is not the engraving which must be approved—that would be proper, but those doing it. Since virtually all important issues are sought to be listed on the New York Stock Exchange, this requirement enables the latter to create a monopoly of the business of engraving securities, and it has done so by confining its approval practically to one concern—the American Bank Note Co. and its affiliated companies, in which many members of the exchange and of powerful banking houses are financially interested. (Kendall, R., 898-900; Ex. 126. R., 900, 927.)

In response to recent protests and following a suit for damages by the New York Bank Note Co. against the members of the exchange, an attempt has been made to create an appearance of competition

which your committee, however, finds to be a mere pretext. The boycott against the New York Co., one of the reasons for which, as stated by the president of the exchange, is that the New York Co. has sued the members for conspiring to ruin it (Mabon, R., 391, 392), seems to your committee without justification or excuse.

#### SECTION 11.—ENFORCING UNIFORM COMMISSIONS.

The exchange enforces a uniform commission for buying and selling of one-eighth of 1 per cent for each \$100 of par value—that is, both the broker buying and the broker selling must make this charge, regardless of the market value of the security. (Mabon, R., 389.) Under this rule a share of stock that sells at \$5 must pay 25 cents on each transaction, whilst a stock selling at \$200 pays no more. Government and municipal securities, however, are exempted. There is a special rate for mining stocks having a market value of \$10 or less per share. (Mabon, R., 391.) Members buying for their own account are charged a lower rate. (Mabon, R., 391.) Every conceivable device for departing from the prescribed rate is prohibited under the most severe penalties. (Mabon, R., 392, 393.)

As stated by Mr. Sturgis, a former president of the exchange, since 1876 a governor, and now the chairman of the law committee (R., 840, 841):

The violation of the commission law we regard as one of the most infamous crimes that a man can commit against his fellow members in the exchange, and as a gross breach of good faith and wrongdoing of the most serious nature, and we consider it a crime that we should punish as severely as, in the judgment of the governing committee, the constitution permits.

Q \* \* \* But the breach of that rule (referring to the rule for uniform commissions) by a broker you consider the most heinous crime he can commit?

A. It is absolute bad faith to his fellow men.

The rule is rigidly enforced by suspension from one to five years for a first violation and expulsion for a second. (Mabon, R., 389, 390.) The acknowledged object is to prevent competition amongst the members. (Mabon, R., 401, 402, 408.)

#### SECTION 12.—STRIKING SECURITIES FROM THE LIST.

The constitution of the exchange provides that the committee on stock list—

shall have power to direct that any such securities or temporary receipts be taken from the list and further dealings therein prohibited;

and that the governing committee—

may suspend dealings in the securities of any corporation previously admitted to quotation upon the exchange, or it may summarily remove any securities from the list. (Mabon, R., 465, 466.)

A regulation dated March 27, 1895, further provides that—

Whenever it shall appear to the committee on stock list that the outstanding amount of any security listed upon the stock exchange has become so reduced as to make inadvisable further dealings therein upon the exchange, the said committee may direct that such security shall be taken from the list and further dealings therein prohibited. (Mabon, R., 466.)

Acting under this authority, the governing committee and the committee on stock list have frequently removed securities from the list. (Mabon, R. 466, 467; Pomroy, R., 473.) Stocks have been so removed on the ground of an insufficient amount outstanding simply because a large proportion of the issue has been acquired by some other corporation. (Mabon, R. 406, 467.)

It follows from what has been said of the value of listing that taking a security from the list injures the holders by depriving them in large part of a market and making borrowing upon such security more difficult.

Mabon (R., 466):

Q. We have already discussed the privilege of having the stock on the list, have we not?

A. Yes.

Q. And there is no question about its great value and advantage in the ordinary run of cases. When a security is once upon the regular list and is an active security, and is being taken as collateral in the banks, and is therefore readily the subject of loans, it is a severe loss to the investor to have it taken from the list, is it not?

A. I should say so.

Pomroy (R., 474, 483):

Q. If a stock is upon the list and has been an active stock on the list, you realize, do you not, that its removal from the list is a great hardship upon the owners of that stock?

A. I do.

A. On the question of the removal of stocks from the list, the governing committee realizes that the question of removing a security from the list is a very serious one. As I have testified, we realize that it deprives a stock of a certain amount of its value, and of its borrowing power, and therefore they consider each case very carefully before the move takes place.

Obviously, therefore, the effect of prohibiting further dealings in the stock of a corporation when the great bulk of it has been acquired by one person, group, or corporation, is, whether intentionally or not, to coerce small stockholders into selling out to the majority holders.

Striking illustrations of the operation of this regulation were brought out at the hearings. Thus, on the reorganization of the Southern Railway Co. by J. P. Morgan & Co., a majority of its stock was placed in a voting trust, which deprived the stockholders of all representation and voting powers and vested the absolute control of the company in the trustees, J. P. Morgan, George F. Baker, and Charles Lanier, who, upon the transfer of the stock into their names, issued the usual trust certificates, which were listed and traded in on the exchange instead of the stock certificates. When this voting trust expired in September, 1902, the trustees, through J. P. Morgan & Co., requested certificate holders to extend the trust and not require the surrender of their stock, which would have restored to the stockholders their control over the property. New trust certificates were issued to those assenting to the extension, and these were listed on the exchange. In March, 1903, the old trust certificates were removed from the list, although there were at that time, which was six months after Messrs. Morgan had requested the extension of the voting trust, certificates representing 183,938 shares, whose holders were apparently unwilling further to resign their voting powers. The result was that those not assenting to the extension of the trust, and hence not taking new trust certificates, found themselves with

a security not listed on the exchange, and, therefore, without a ready market and not available as collateral. (Pomroy, R., 474-477; Ex. 224, R., 1955.) The listing of the extended certificates and the removal from the list of the old ones, whether so intended or not, operated as a means of coercing the holders of these 183,938 shares into exchanging their old certificates in order to get a listed security which could be sold or made available for borrowing purposes. It is now 19 years since that voting trust was created, and it has not yet been dissolved.

Again, in the development of the Tobacco Trust, those who were in control of the management organized a new company known as the Consolidated Tobacco Co., to the stock of which they alone were permitted to subscribe. They paid in 25 per cent of the \$30,000,000 capital, and thereupon offered its 4 per cent bonds at par in exchange for the shares of the old American Tobacco Co. and the Continental Tobacco Co. at 200 and par, respectively. The bonds had no security behind them other than the stock that was being received in exchange and the subscriptions to the stock of the Consolidated Co. The exchange having proceeded until the Consolidated Co. had acquired all but 11,357 shares of the common stock of the old American Tobacco Co., the Morton Trust Co., whose vice president, Mr. Thomas F. Ryan, was one of the dominant factors in the Tobacco Trust, requested that this issue be taken from the list. The request was granted. The manner and effect of the removal in this instance are thus stated in the testimony of Mr. Pomroy (R., 480, 481):

Q. Let us have the documents on which you based that. The effect of that transaction of the Consolidated Tobacco Co., as to every American Tobacco Co. stockholder that went into it, was that that stockholder got 4 per cent bonds for his own stock at a rate of 200 for his stock.

A. Yes; I presume those were the terms.

Q. And the stock was paying 8 per cent then and was earning about 30 per cent?

A. I do not know.

Q. Do you not know the facts?

A. No, sir.

Q. Do you not know that the old American Tobacco Co. stock got to be worth a lot of money?

A. Oh, yes; I saw the quotations in the papers.

Q. It went to 50 or 600?

A. It went to a good price, I know.

\* \* \* \* \*

Q. Do you mean to tell us that was all you had upon which you based your action in excluding this stock from the list?

A. I would not say that is all. It is all that I can recall at the present moment.

Q. Nothing but assertions of the assistant secretary of the Morton Trust Co. and of the secretary; is that right?

A. Yes.

Q. Did you know who was in control of the Morton Trust Co.?

A. No.

Q. You never heard of that? You never heard that Mr. Thomas F. Ryan was in control?

A. I saw by the letterhead that Thomas F. Ryan was vice president.

Q. Did you not know that he was the controlling man?

A. No.

\* \* \* \* \*

Q. And you concede that it was a distinct injury to the outstanding stockholder to have his stock removed?

A. I concede that it was an injury; yes.

Q. I will read into the record a resolution of January 21, 1902, or, that is, the entry in the minutes of the meeting of that day.

Letter from the Morton Trust Co. states that there are only 11,357 shares of the common stock of the American Tobacco Co. actually outstanding.

The committee thereupon voted that the stock be stricken from the list on the 27th.

The effect of this action was to further the schemes of the promoters of this enterprise to take from the stockholders their equity and transfer that equity into the pockets of the promoters. When that stock was stricken from the list it ceased to be readily available as collateral, as it had lost its market quotation. Its best market thereafter was manifestly among the insiders, who understood its intrinsic value.

The holders of this stock, as did the holders of Southern Railway securities and of a number of others that have been stricken from the list, presumably made their purchases while the securities were listed. They did nothing to forfeit their right to have them remain on the list and thereby keep the market they had when they acquired their holdings. Yet without reason or notice the holders find themselves confronted with the alternative of selling at a price fixed by the purchaser or having their market destroyed.

#### SECTION 13.—REHYPOTHECATION OF CUSTOMERS' SECURITIES.

The exchange has no rule prohibiting members from pledging the securities purchased for the account of a customer for a larger amount than is owing thereon, and the thing is constantly being done. (Sturgis, R., 794; Wollman, R., 1787.) It has, strange to say, grown to be a recognized business custom on the part of brokers in dealing with their customers' property that is pledged with them. In obtaining loans a broker will mix the securities offered by him as collateral without considering to whom they belong or the amount owing upon them by the customer. For example, as collateral for a given loan a broker will pledge indiscriminately securities purchased for the separate accounts of A, B, and C, and the amount he borrows will not be limited to the amount owing to him if he can obtain more. (Sturgis, R., 796-799.) As a result, if the broker fails, the customer can not get his securities by paying what he owes upon them; he must pay the entire loan or lose them. (R., 799.) Experience has shown that in such cases he loses his equity.

Even where securities held for a customer have been wholly paid for, no rule of the exchange specifically prohibits their use as collateral, although members doing so may be proceeded against under the rules punishing fraudulent acts and conduct detrimental to the exchange. (Sturgis, R., 795, 796.)

#### SECTION 14. UNWHOLESOME SPECULATION.

But it is in respect of the extent and character of the speculation in securities for which it is the agency that the New York Stock Exchange touches most vitally the affairs of the people of the entire country. This subject was investigated in 1909 by a committee on speculation in securities and commodities appointed by Gov. Hughes, of New York, and its complete report is annexed to the record as Exhibit No. 27. That committee had, however, no power to sub-

pœna witnesses or to send for books and papers. It was compelled to rely largely on statements formulated by the governors of the exchange in consultation with their counsel in answer to written questions. While opinions will differ as to the wisdom or adequacy of the recommendations of that committee, its distinguished personnel and exceptional qualifications are a guaranty of the thoroughness and accuracy of its findings of fact.

It found, among other things, that—

It is unquestionable that only a small part of the transactions upon the exchange is of an investment character; a substantial part may be characterized as virtually gambling.

The rules of all the exchanges forbid gambling \* \* \* but they make so easy a technical delivery of the property contracted for that the practical effect of such speculation, in point of form legitimate, is not greatly different from that of gambling. Contracts to buy may be privately offset by contracts to sell. The offsetting may be done in a systematic way, by clearing houses, or by "ring settlements." Where deliveries are actually made, property may be temporarily borrowed for the purpose. In these ways, speculation which has the legal traits of legitimate dealing may go on almost as freely as mere wagering, and may have most of the pecuniary and immoral effects of gambling on a large scale.

A real distinction exists between speculation which is carried on by persons of means and experience, and based on an intelligent forecast, and that which is carried on by persons without these qualifications. The former is closely connected with regular business. While not unaccompanied by waste and loss, this speculation accomplishes an amount of good which offsets much of its cost. The latter does but a small amount of good and an almost incalculable amount of evil. In its nature it is in the same class with gambling upon the race track or at the roulette table, but is practiced on a vastly larger scale. Its ramifications extend to all parts of the country. It involves a practical certainty of loss to those who engage in it. A continuous stream of wealth, taken from the actual capital of innumerable persons of relatively small means, swells the income of brokers and operators dependent on this class of business; and in so far as it is consumed, like most income, it represents a waste of capital. The total amount of this waste is rudely indicated by the obvious cost of the vast mechanism of brokerage and by manipulators' gains, of both of which it is a large constituent element. But for a continuous influx of new customers, replacing those whose losses force them out of the "street," this costly mechanism of speculation could not be maintained on anything like its present scale.

That in large measure transactions in shares on the New York Stock Exchange are purely speculative is also evidenced by the high ratio of the sales of a given stock, during very short periods, to the total amount listed, and, further, by the gross disproportion between the number of shares sold and the number transferred on the company's books within stated periods, such transfers measuring in at least a rough way the purchases for investment.

With respect to dividend-paying stocks this method of arriving at the proportion of transactions on the exchange that is speculative errs largely on the side of conservatism. It includes as investment buying the large number of transfers that are made from one brokerage house to another in execution of purely speculative transactions.

These facts are brought out by a series of tables and charts contained in the record, comparing month by month, since 1906, the number of shares sold of various corporations and the number transferred and the total number listed on the exchange. There are also supplemental tables showing the sales day by day during the most active months. (Exhibits 74 to 108, inc., R., 1120-1178.)

The corporations selected for the purpose are Reading Co., United States Steel Corporation, Amalgamated Copper Co., Union Pacific Railroad Co., American Can Co., Rock Island Co., American Smelting & Refining Co., Columbus & Hocking Coal & Iron Co., Erie Railroad

Co., Consolidated Gas Co., Brooklyn Rapid Transit Co., Colorado Fuel & Iron Co., California Petroleum Co., and Mexican Petroleum Co.

The shares of the two last-named companies were only listed within the past year.

These tables and charts are annexed to this report as Appendix D. No adequate descriptive analysis of them can be made.

Stating the results shown, only in the most general way, it appears that there has not been a year since January 1, 1906, when the Reading Co.'s entire common stock issue listed and subject to sale was not sold at least 20 times over and from that on up to 43 times; that in a single month of that period it was sold 6 times over and that in only 2 months of the entire period was it sold less than once over in a single month; and that although it is a dividend-paying stock the number of shares transferred on the company's books averaged for the period 8.6 per cent of the shares sold.

Summarily stated, it further appears that in each year since January 1, 1906, the entire listed common stock issue of the United States Steel Corporation has been sold 5 times over each year on the average, while the number of shares transferred on the company's books has averaged 25 per cent of the number sold;

That in the same period the entire common-stock issue of the Amalgamated Copper Co. has been sold 8 times over each year on the average, while the number of shares transferred has averaged about 20 per cent of the number sold;

That since January 1, 1906, the entire listed common-stock issue of the Union Pacific Railroad Co. has been sold  $11\frac{1}{2}$  times over each year, while in 1912 the number of shares transferred was only 16 per cent of the number sold;

That in 1912 the entire listed common stock of the American Can Co. was sold  $8\frac{1}{2}$  times over, while the number of shares transferred was 25 per cent of the number sold;

That since January 1, 1906, the entire listed common-stock issue of the Rock Island Co. has been sold twice over each year on the average, while the number of shares transferred has averaged little more than 27 per cent of the number sold;

That since January 1, 1906, the entire common-stock issue of the American Smelting & Refining Co. has been sold twelve times over each year on the average, while the number of shares transferred has averaged about 18 per cent of the number sold;

That since January 1, 1906, the entire listed common-stock issue of the Erie Railroad Co. has been sold more than twice over each year on the average, while the number of shares transferred has averaged only 30 per cent of the number sold;

That since January 1, 1906, the entire listed common-stock issue of the Consolidated Gas Co. has been sold more than once over each year on the average, while the number of shares transferred has averaged only about 40 per cent of the number sold;

That since January 1, 1906, the entire listed common-stock issue of the Brooklyn Rapid Transit Co. has been sold six times over each year on the average, while the number of shares transferred has averaged 23 per cent of the number sold;

That since January 1, 1903, the entire listed common-stock issue of the Colorado Fuel & Iron Co. has been sold five times over each year

on the average—in 1906, 18 times over—while the number of shares transferred has averaged less than 20 per cent of the number sold;

That in October, 1912, the first month during which the common stock of the California Petroleum Co. was listed, the entire issue was sold more than three and one-half times over; and

That in the seven months from April (when it was listed) to October, 1912, the entire common-stock issue of the Mexican Petroleum Co. was sold nearly nine times over.

Customers of members of the exchange are not required to pay more than 10 per cent of the purchase price of securities. A member of one of the largest brokerage houses in New York testified that 90 per cent of its business was done on that basis. (Wollman, R., 1787.) Of course, the smaller the margin required, the larger the number of shares a given sum will purchase and the wider the circle of people who will be engulfed in speculation.

Such excessive and indiscriminate speculation in stocks as is thus shown to be conducted on the New York Stock Exchange is not only hurtful in the way that all public gambling is hurtful, but in addition it withdraws from productive industry vast quantities of capital.

Statements compiled by accountants for the committee based on data obtained from only 32 of the banks and trust companies of New York City, members of the New York Clearing House Association, show that on November 1, 1912, these institutions, for themselves and for their out-of-town correspondents, had outstanding loans on stock-exchange collateral amounting to \$766,795,000. (Niven, R., 955, 956; Ex. 133, R. 1192, 1193.) This apparently represents a substantial part of the sum required to carry stocks bought on margin on the New York Stock Exchange, but by no means measures the full extent. The calculation includes less than one-third of the total number of banks and trust companies of New York City, although it embraces most of the important ones. But it takes in none of the great international banking houses that are lenders for their own as well as for foreign account, nor does it include any of the large financial institutions of neighboring cities that lend on the exchange or through brokers, nor the many loans of this character made by individuals in one way or another. It is impossible upon the data before us reliably to estimate the full extent of the funds of the country employed in Wall Street speculation.

Of the amount stated, \$240,480,000 was lent directly for the account of out-of-town banks by the institutions named, in addition to the sums that these out-of-town banks withdrew from their New York correspondents for the same purpose, attracted by the high rates offered. (Niven, R., 956.) And this at a time when money was needed for crop-moving and other legitimate commercial purposes.

That a check upon speculation is not only advisable but necessary is evident from the statement of Mr. Sturgis on that subject (R., 834):

Q. We are speaking of transactions that are made by members of your exchange in the way of short selling. Would not their books show whether or not they were selling short?

A. If the broker is operating for his own account, yes.

Q. And you say from a quarter to a half of the transactions on the exchange are for the broker's own account?

A. We agreed upon a third, I think.

## SECTION 15.—MANIPULATION.

A very important phase of speculation on the New York Stock Exchange is the manipulation of prices up or down, as desired, without regard to the real value of the securities, and the creation of a false appearance of activity in particular stocks. Besides inciting, as intended, popular speculation, which rather should be discouraged, this practice prevents the exchange from faithfully reflecting the current value of securities—one of its true functions—and gives those controlling great supplies of capital a further power over the enterprises of the country, since the credit of corporations in no small degree is affected by the prices of their securities.

A favorite device of manipulation consists in the giving of simultaneous or substantially simultaneous orders by the same person or persons to buy and sell the same stock. In this way the market for a stock is given a false appearance of activity, the object being to draw the public into the speculation.

That prices on the exchange are artificially raised or lowered through the concentration of buying or selling orders, as the case may be, and that unreal appearances of activity are created through the giving by the same person or persons of simultaneous orders to buy and sell particular stocks, is not only admitted by officers of the exchange, but justified by them; provided only that the transactions are not purely fictitious—that is, so arranged that in reality the operator would be buying from and selling to himself.

Thus, Mr. Sturgis testified as follows (R., 808, 810, 811, 812):

Q. If a member of the exchange gives to one broker an order to buy 1,000 shares of stock and an order to sell 1,000 shares of the same stock, and both these orders are executed—

A. By different brokers?

Q. By different brokers.

A. And a commission paid?

Q. And a commission paid, which seems to be important—

A. Very.

Q. (Continuing.) That you consider a perfectly legitimate transaction?

A. That is not illegitimate.

Q. You think it is legitimate?

A. I do; providing, as I said here in this article, there is no knowledge and that the orders are given in equally good faith, with no collusion between the two parties.

Q. \* \* \* Now, will you not tell us whether or not, when you were active in business, it was not then, as it is now, a common experience for pools and syndicates to manipulate the prices of a stock for the purpose of getting a higher level, or a lower level sometimes—sometimes to manipulate them for a higher level and sometimes to manipulate them for a lower level of prices?

A. I understand that he has testified in that regard, in saying that from all that he has heard, and the experience that he has had there, such things have been done. That is what he has answered. That is exactly what he has said.

Q. If he says that, very well, then. That is all we want.

A. That is what I have said.

Q. I understood you just to say that it was only hearsay evidence.

A. It is true of all expert testimony—

Q. That is all we care about, then. You consider that sort of an operation legitimate, do you?

A. I think I have answered that question.

Q. Will you not answer it again?

A. So far as my answer is concerned in the book—

Q. No, Mr. Sturgis, please do not—

A. Yes.

Q. Very well; that is an answer. How do you justify as legitimate the transactions of a pool or syndicate in giving out buying and selling orders to brokers for the purpose of lifting the price of the stock or of depressing it?

A. Those are the acts of individuals. I can not be responsible for what thousands of people throughout this country do.

Q. Do you seek to justify it?

A. It depends entirely upon circumstances. I have already said that under certain conditions, orders given out, commissions paid, no collusion whatsoever, the broker who buys not having the slightest idea where the order comes from that the broker executes to sell—I say it is not an illegitimate transaction.

Q. \* \* \* Will you be good enough to answer that question? Is not the operation, at times, resorted to to depress prices, and at other times to lift prices?

A. Yes; I can consistently answer that.

Q. You approve of those transactions, do you?

A. I approve of transactions that pay their proper commissions and are properly transacted. You are asking me a moral question, and I am answering you a stock-exchange question.

Q. What is the difference?

A. They are very different things.

Q. I thought so. There is no relation between a moral question, then, and a stock-exchange question?

A. Sometimes.

Mr. Keppler, another governor of the exchange, gave similar testimony. (R., 855.)

The practices thus approved by the authorities of the exchange not only deceive the great body of the public as to the true state of the market and whet their appetite for speculation, but debase and make impossible of fulfillment the high office of the exchange as a register of the current values of securities, and draw from the channels of legitimate trade and commerce millions of the country's capital.

*Columbus & Hocking Coal & Iron pool.*—Perhaps the most notorious instance of manipulation in recent years was the operation in the stock of the Columbus & Hocking Coal & Iron Co., conducted by a pool of which James R. Keene was manager.

A pool is an agreement between named persons of firms to buy or sell within a stated period and in stated proportions, not exceeding a certain number of shares of a particular stock.

A manager is appointed who alone is authorized to direct the buying and selling for the account of the pool.

He is the gentleman who manipulates the stock, giving the buying and selling orders. (Morse, R. 710.)

If he merely wishes to make a stock appear active, he gives buying and selling orders in about equal volume; if he wishes to put up the price, he gives an excess of buying orders; if he wishes to depress, he gives an excess of selling orders. (Morse, R. 710, 711.)

A member is prohibited, of course, from selling or buying for his own account any shares of the stock in question so long as the pool is in existence.

This particular pool, which was formed in March, 1909, was composed of 10 stock exchange firms and James R. Keene, who, as stated was also the manager. (Morse, R., 711, 712.)

The effect of the operations of the pool upon the activity and price of the stock can be seen at a glance from a table and diagram in the record. (Exs. 92 and 93, R., 1149, 1151.) In February, 1909, immediately preceding the formation of the pool, 8,650 shares of the Hocking stock were traded in out of a total issue listed of 69,304 shares. In March, when the pool began operations, 143,490 shares were traded in—more than twice the entire amount listed—while the price was forced up from 24 to 45. Thereafter, with less activity, the price was worked up through a calculated adjustment of buying and selling orders until it reached 92½ in January, 1910. There was no warrant for any such price, as the company was earning only one-half of 1 per cent on its capital. (Sturgis, R., 848.)

A statement from the books of one of the brokers employed by the pool, showing his purchases and sales of the stock day by day from November 12, 1909, to January 18, 1912, was furnished your committee. His total purchases in that period were 9,000 shares and sales 8,800 shares. (Criss, R., 912; Exs. 127, 128, 129, R., 1183.)

To illustrate the method of operations, on a typical day he received orders to buy 200 shares at 87½ and at each ¼ down, and to sell 200 shares at 90 and at each ¼ up. (Criss, R., 911.)

Finally, on January 19, 1910, the stock was offered for sale in such volume that the pool could not absorb it, and on sales of 30,000 shares—nearly half the total number listed—the price broke in a few hours from 88 to 25, dragging to failure the stock exchange firms of Lathrop, Haskins & Co. and J. M. Fiske & Co., members of the pool, and Roberts, Hall & Criss, Mr. Criss being the "specialist" in the stock who had been engaged to execute orders for the pool. (Morse, R., 712, 713; Popper, R., 907, 908; Criss, R., 910, 911.) Mr. Criss thus testified as to the cause of the collapse (R., 910, 911):

- Q. You bought 14,000 shares the last morning?  
 A. Yes.  
 Q. You were trying to keep up the market?  
 A. I was trying to support the market; yes.  
 Q. Where did all the stock come from?  
 A. It came in gradually at first, and after a while it seemed to come from all over the face of the earth. I could not say.  
 Q. Then you had to stand from under, did you?  
 A. I stayed there until they canceled my order, when I stopped trading in the stock. I bought only 100 shares under 70.  
 Q. Then you were swamped?  
 A. Yes, sir.  
 Q. And your firm went under as a result of that?  
 A. As a result of that; yes.  
 Q. Did you gather from this flood of selling orders that somebody on the inside was selling out the pool?  
 A. I thought something like that, sir.  
 Q. You know stock-exchange indications, do you not?  
 A. Well, yes.  
 Q. You know the danger signals?  
 A. I knew something was wrong, but I could not help but obey my order.  
 Q. Finally, what transpired with respect to the subject?  
 A. Will you explain just what you mean?  
 Q. I mean, what did you finally ascertain was the cause of the breaking of the pool?  
 A. That Lathrop & Haskins failed and that somebody leaked on the pool. We said somebody had leaked on the pool.  
 Q. Somebody leaked?  
 A. Leaked pretty heavily.  
 Q. Did you find out who it was who had sold out the pool?

A. There has always been rather a mystery about it. Eventually Mr. Keene settled.

Q. What is that?

A. Eventually we made a settlement with Mr. Keene, so I had my own opinion of the matter.

Subsequently the stock disappeared from the trading list after its price had fallen to \$2 a share. (Morse, R., 713.) How much of it was unloaded on the public as the price was rising there is no way of ascertaining. (Morse, R., 716, 717.)

That the authorities of the exchange were aware of this operation while it was in progress is shown by the fact that the firm most prominently engaged in it on the floor of the exchange was "twice cautioned" by the president at the request of the law committee. (Sturgis, R., 845.)

Having this knowledge it would have been an easy matter for the law committee and the governing committee, under their power to inquire into the dealings of members and to make examinations of their books (Const., Art. XI, subd. 9; Art. XVII, sec. 7), to discover all those engaged in the operation and stop it. The accountant for the receiver in bankruptcy of one of the failed firms, with more limited facilities for examination, was able to uncover the "wash sales" and other manipulative transactions and the brokers who executed them. (Morse, R., 714-716.)

More remarkable even than the neglect of the authorities of the exchange to stop this operation when they knew it was going on was the theory on which they inflicted punishment after the pool collapsed. Of the 9 or 10 firms engaged in the pool, only the ones that failed were punished. They were expelled from the exchange. The others were neither expelled nor suspended, but merely "censured." Thus the punishment was inflicted, not for the character of the operations, since all were equally culpable in that regard, but for becoming insolvent in consequence of dealing beyond one's means.

This was admitted by Mr. Sturgis (R., 846):

Q. I should like to know why you should expel two members of a pool out of seven stock exchange firms for doing the same thing that the other five did simply because those two happened to fail at it.

A. Because they went away beyond their means.

Mr. Sturgis further stated that the members of this pool who did not fail were not punishable under the constitution of the exchange for the character of operations in which they engaged and that he did not think they ought to be (Sturgis, R., 846, 847):

Q. Do you mean to say that the things these seven firms did were not punishable under the constitution?

A. No; they were not punishable.

Q. Do you not think they ought to be?

A. We have not thought so heretofore.

Q. Do you not think so?

A. I do not think so; no.

Yet had they executed an order for a customer at less than the rate of commission fixed by the exchange, or held communication with a member of the consolidated exchange, they would have been punishable by suspension for not less than a year for the first offense and by expulsion for the second.

*The Rock Island "episode" of December 27, 1909.*—Another notable instance of manipulation brought out in the testimony occurred on December 27, 1909, when a firm of brokers, by direction of a leading figure in the financial world, gave orders to each of 20 brokers to buy at the opening of the market 2,000 shares of the common stock of the Rock Island Co., a holding corporation, controlling the Chicago, Rock Island & Pacific Railroad. (Mabon, R., 394, 395, 398, 399.) The price immediately rose 30 points, falling the same amount after the orders were executed, which was on the same day and only a few hours after the "operation" began. (Mabon, R., 398.)

A special committee of the exchange appointed to investigate this operation found—

That said firm, and the members thereof, should have known, and must have known, that the execution of such an order in such a manner could serve no proper or legitimate purpose, but that the same would result in confusion, panic, and loss, and would create a fictitious condition of the market in the same stock, thus depriving the quotations of transactions upon the exchange of their value as standards of the real market value of securities. (Mabon, R., 398.)

Thereupon one member of the firm was suspended for 30 days and another for 60 days. (Sturgis, R., 841.) This mild punishment hardly bears out the statement of the president of the exchange that—

One of the greatest efforts of the governors of the exchange is to stop manipulation. (Mabon, R. 394.)

Contrast it with the penalty of suspension for four years or expulsion for charging less than the prescribed rate of commission or communicating with a member of the consolidated exchange—infractions which, so far as the public is concerned, are not in the least harmful and would in fact if permitted be beneficial.

*The California Petroleum Co. flotation.*—A typical instance of manipulation for the purpose of stimulating speculation in a new security is the operation in the stock of the California Petroleum Co., begun in October last whilst this investigation was in progress and the subject of manipulation of securities on the stock exchange was under active discussion.

This company was organized in September, 1912, with an authorized capital stock of \$32,500,000—\$17,500,000 preferred and \$15,000,000 common—of which \$11,997,024 preferred and \$13,513,081 common was given in payment for the stocks of two California oil-producing companies. (Henry, R., 1251-1253.) Simultaneously, and as part of the plan, William Salomon & Co., bankers of New York, and associates, namely: Hallgarten & Co. and Lewisohn Bros., of New York, and a fourth not named, for \$8,215,662 in cash, purchased from the vendors \$10,000,000 of the preferred and \$7,572,845 of the common stock of the California Petroleum Co., which the latter had accepted in payment for the stock of the two producing companies, William Salomon & Co., Hallgarten & Co., and Lewisohn Bros. each taking 29½ per cent and the unnamed associate 12½ per cent. (Henry, R., 1253, 1255, 1270; Exs. 149-153, R., 1261-1266.)

Thereupon the bankers, as we shall hereafter call them, formed a syndicate in New York to underwrite \$5,000,000 of the preferred and \$2,500,000 of the common stock at the price of \$5,000,000, and sold to a London syndicate the same amount at the same price, leaving

the bankers at this point with a profit of \$1,784,338 in cash and \$2,572,845 in common stock, which latter they sold at 40 and 45. (Henry, R., 1271, 1285.)

The bankers also joined the New York syndicate, in which altogether there were 104 members, including—

(a) Three corporations affiliated with national banks—two of them in New York, one of which had a participation of \$500,000 and the other \$50,000, and one outside with a participation of \$50,000;

(b) One trust company in New York with a participation of \$50,000; and

(c) Twenty-four officers of banks, among them officers of four national banks in New York, two in Chicago, and one in Detroit, whose aggregate participations were \$535,000, the largest single participation—\$50,000—going to an officer of a Wall Street bank which lends on stock-exchange collateral. (Henry, R. 1271-1275.)

The stock was all sold at an advance of nearly \$500,000 above the price at which it was underwritten on the day it was delivered to the bankers—October 2, 1912—and before any appreciable number of the syndicate had accepted the offers of participation. Thus nearly all the underwriters, including the bank officers, got their profits without having made any commitment; and none of them put up any money or had to take any stock. (Henry, R., 1277, 1278.)

Mr. Henry, of Salomon & Co., who was called as a witness in regard to this transaction, having refused to divulge the names of the national bank officers who received participations in this syndicate, his contumacy was certified to the House and from there to the United States attorney for the District of Columbia for prosecution under sections 102, 103, and 104 of the Revised Statutes. Your committee is of opinion that the information sought from Mr. Henry is germane to the question, Whether national bank officers are being influenced by any form of reward to lend the money of their banks on newly-listed and unseasoned stocks? It was impossible for the Committee without knowing the identity of the banks and officers to determine whether these participations to officers were given for the purpose of inducing the banks they served to accept these new securities as collateral for loans or whether they were so accepted.

The stock of the California Petroleum Co. was listed on the New York Stock Exchange on October 5, after the portion underwritten by the syndicate and the separate holdings of the bankers had all been sold. (Henry, R., 1281.)

Thereafter an operation in the stock was conducted (principally in the common) on the New York Stock Exchange by Lewisohn Bros., for the joint account of the bankers, for the purpose, as described, of "making a market." (Henry, R., 1282, 1283.) Under the general direction of Salomon & Co., Lewisohn Bros. would put in separate orders to different brokers on the morning of every day to sell on a scale up and to buy on a scale down, so adjusted that at the end of the day they would have bought and sold, so far as market conditions permitted, substantially the same number of shares. (Henry, R., 1282, 1284.) There is in the record a table showing the purchases and sales by Lewisohn Bros. and the prices day by day from October 5, when the stock was listed, through the end of that month, from which it appears that during that period of about 21 business days 163,000 shares

were purchased and 172,900 sold by Lewisohn Bros. for account of themselves and associates. (Ex. 1324, R., 1186.)

Under the influence of this operation the price of the common stock, starting at about 62½, quickly rose to 72; it had fallen to 50 by December. (Henry, R., 1285, 1286.) Mr. Henry of Salomon & Co., stated that he supposed the public bought largely on the rise. (R., 1286.)

The total purchases and sales on the exchange during these 21 days were 362,270 shares, which was equal to over three and one-half times the total outstanding common stock.

It should be said that Mr. Henry testified that neither his firm nor any of the original purchasers, so far as he knew, made any profit on the stock market operation (except, of course, Lewisohn Bros. received the usual stockbrokers' commission), having sold their stock before buying it. (Henry, R., 1281, 1282, 1284.) The purpose in this case apparently was to create an appearance of activity in the stock that would enable those to whom it had been sold to resell it to the general public at a profit. No action appears to have been taken by the exchange as the result of this operation, in which important banking houses, members of the exchange, were involved.

Time did not permit nor did the committee find it necessary to make specific proof of other cases of manipulation except as shown by the statistics to which we have referred. These cases were selected merely as illustrative of the procedure and purposes of such transactions.

#### SECTION 16.—SHORT SELLING.

In the usual acceptance of the term one sells short when he sells stock not owned by him, but which he borrows for delivery in the expectation that the price will fall, thereby enabling him to buy and return the borrowed stock at a profit to himself. The operation is not peculiar to the stock exchange, but is also familiar to the commodity markets. The extent to which it is practiced on the New York Stock Exchange could not be definitely ascertained.

Whilst your committee has not been impressed with the contention that short selling performs a valuable function in checking a rapid ascent of prices, it is enough to say that there seems no greater reason for prohibiting speculation by way of selling securities in the expectation of buying them back at lower prices than by way of purchasing them in the expectation of at once reselling at higher prices.

That is not to say, however, that means for facilitating short selling should be countenanced, since all speculation, whether for the rise or for the fall, needs to be curbed rather than stimulated. Therefore brokers should not be allowed to lend their customers' stocks to persons who have sold short and need stock with which to make deliveries.

The following extract from Mr. Sturgis's testimony fairly represents the stock exchange view of short selling and the arguments that are advanced to support it. (Sturgis R. 830, 831, 832, 833):

Q. Certainly. What is the purpose of short selling?

A. Generally speaking, to make a profit.

Q. To make a profit by what process?

A. By repurchasing the short sale at a declining price.

Q. That is, by selling a security that you have not got and gambling on the proposition that you can get it cheaper and deliver the thing that is sold? Is not that it?

A. That is the usual process—selling when you think the price is too high and repurchasing when you think it has reached the proper level.

Q. But is it, or not, the process of selling a thing you have not got?

A. It is.

Q. And is it, or not, with the idea that it will go lower, or can be depressed lower, and bought cheaper and delivered?

A. Truly.

Q. Do I understand that you regard that as legitimate and defensible?

A. Do you wish my personal expression of opinion?

Q. Yes.

A. I think it depends entirely upon circumstances.

Q. Under what circumstances would you regard that sort of short selling as legitimate and proper?

A. I would regard it so if there was a panic raging over the country and it was desirable to protect interests which could not be sold. I think it would be a perfectly legitimate thing to do.

Q. Let us see about that. If there was a panic raging over the country and a man sold stocks short, would not that simply add to the panic?

A. It might. Self-preservation is the first law of nature.

Q. But, as I understand it, if there is a panic raging over the country, you think it is defensible for a man to depress stocks by selling stocks he has not got, with the idea of adding to the panic?

A. Mr. Untermeyer, if a person has property which is absolutely unsalable and he can, so to speak, protect his position by selling something for which there is a broad market—

Q. That he has not got?

A. (continuing). I do not consider it wrong.

Q. Mr. Sturges, let us just analyze that, because I do not think I understand you. You do not want to be misunderstood, do you?

A. It is not my wish.

Q. And I do not want you to be misunderstood. Do you mean to say that if there is a panic raging it is a defensible thing for a man, under any circumstances, to sell stock that he has not got, with the idea of getting it back cheaper?

A. I do think it is defensible. I certainly think it is defensible.

Q. For what purposes does he do that except to try to make money?

A. To try to save his credit, perhaps.

Q. How does he save his credit in a panic by selling stocks that he has not got, with the idea of adding to the panic and getting them cheaper?

A. Because if he can make a profit on that sale it may repair the losses that he has made on stocks he can not sell.

Q. I see. You know that that would simply accentuate the fierceness of the panic, do you not?

A. It could not be otherwise.

Q. Certainly. And his only purpose in doing a thing of that kind in time of panic would be to make money, would it not?

A. To protect himself.

Q. It would be to make money, would it not?

A. Yes; and that would protect him.

Q. Of course it always protects a man to make money, no matter how he makes it, does it not?

A. Yes, sir.

Q. And that, you think, is justifiable?

A. I think under those circumstances it is.

Q. You do not want to make any further explanation of that proposition, do you?

A. I do not.

Q. Is it any more justifiable for a man to sell short in a panic than in a normal market?

A. It depends very much upon his financial necessities.

Q. Do you regard it as justifiable in a normal market for a man to sell a thing he has not got, with the idea of depressing prices in order to buy in the stock at a lower level?

A. I think it is a question between a man and his own conscience.

Q. I am asking for your judgment. You have been many years in the exchange, and you are a careful observer, and I would like to know your judgment.

- A. I think a great many people deprecate it. Others approve it.
- Q. Do you approve of it?
- A. You ask me personally?
- Q. Yes.
- A. I never sold a share of stock short in my life.
- Q. Then you do not approve of it, do you?
- A. I just happen not to have done it. My private business, if you please, I beg you to omit.
- Q. I have not asked you your private business.
- A. Yes; you asked me what I did myself.
- Q. I did not ask you that, sir; I asked you what you thought about it.
- \* \* \* \* \*
- Q. Do you approve of short selling in others?
- A. Under what conditions?
- Q. Under any conditions.
- A. Yes; under some conditions.
- Q. Do you approve of short selling in a normal market?
- A. I will answer that question by saying it is a moral question with the individual himself. It is not up to me to express my opinion upon it.
- Q. Do you personally approve of short selling in a normal market?
- A. Not I, personally; no.
- Q. You do not. And is it or not the fact that the bulk of the short selling is done in a normal market?
- A. I should say no; more often on an excited market.
- Q. It is done every day, is it not?
- A. Oh, yes; to some extent.
- Q. And it is done in large volume, is it not?
- A. At times.
- Q. The stock exchange does not discourage it, does it?
- A. The stock exchange does not enter into it at all.
- Q. The stock exchange does not discourage short selling, does it?
- A. The stock exchange takes no position in the matter at all.
- Q. Has the stock exchange any rule or regulation against short selling?
- A. None.
- Q. Why is it not just as simple a matter for them to have a regulation against short selling as to have a regulation against a broker splitting his commissions?
- A. There is no regulation against short selling; that is all I can say to you about it.

## CHAPTER THIRD.—CONCENTRATION OF CONTROL OF MONEY AND CREDIT.

### SECTION 1.—TWO KINDS OF CONCENTRATION.

It is important at the outset to distinguish between concentration of the *volume of money* in the three central reserve cities of the national banking system—New York, Chicago, and St. Louis—and concentration of *control* of this volume of money and consequently of credit into fewer and fewer hands. They are very different things. An increasing proportion of the banking resources of the country might be concentrating at a given point at the same time that *control* of such resources at that point was spreading out in a wider circle.

Concentration of *control* of money, and consequently of credit, more particularly in the city of New York, is the subject of this inquiry. With concentration of the *volume* of money at certain points, sometimes attributed, so far as it is unnatural, to the provision of the national-banking act permitting banks in the 47 other reserve cities to deposit with those in the three central reserve cities half of their reserves, we are not here directly concerned.

Whether under a different currency system the resources in our banks would be greater or less is comparatively immaterial if they continued to be controlled by a small group. We therefore regard the argument presented to us to show that the growth of concentration of the volume of resources in the banks of New York City has been at a rate slightly less than in the rest of the country, if that be the fact, as not involved in our inquiry. It should be observed in this connection, however, that the concentration of control of credit is by no means confined to New York City, so that the argument is inapplicable also in this respect.

### SECTION 2.—FACT OF INCREASING CONCENTRATION ADMITTED.

The resources of the banks and trust companies of the city of New York in 1911 were \$5,121,245,175, which is 21.73 per cent of the total banking resources of the country as reported to the Comptroller of the Currency. This takes no account of the unknown resources of the great private banking houses whose affiliations to the New York financial institutions we are about to discuss.

That in recent years concentration of control of the banking resources and consequently of credit by the group to which we will refer has grown apace in the city of New York is defended by some witnesses and regretted by others, but acknowledged by all to be a fact.

As appears from statistics compiled by accountants for the committee, in 1911, of the total resources of the banks and trust companies in New York City, the 20 largest held 42.97 per cent; in 1906, the 20 largest held 38.24 per cent of the total; in 1901, 34.97 per cent.

## SECTION 3.—PROCESSES OF CONCENTRATION.

This increased concentration of control of money and credit has been effected principally as follows:

First, through consolidations of competitive or potentially competitive banks and trust companies, which consolidations in turn have recently been brought under sympathetic management.

Second, through the same powerful interests becoming large stockholders in potentially competitive banks and trust companies. This is the simplest way of acquiring control, but since it requires the largest investment of capital, it is the least used, although the recent investments in that direction for that apparent purpose amount to tens of millions of dollars in present market values.

Third, through the confederation of potentially competitive banks and trust companies by means of the system of interlocking directorates.

Fourth, through the influence which the more powerful banking houses, banks, and trust companies have secured in the management of insurance companies, railroads, producing and trading corporations, and public utility corporations, by means of stockholdings, voting trusts, fiscal agency contracts, or representation upon their boards of directors, or through supplying the money requirements of railway, industrial, and public utilities corporations and thereby being enabled to participate in the determination of their financial and business policies.

Fifth, through partnership or joint account arrangements between a few of the leading banking houses, banks, and trust companies in the purchase of security issues of the great interstate corporations, accompanied by understandings of recent growth—sometimes called “banking ethics”—which have had the effect of effectually destroying competition between such banking houses, banks, and trust companies in the struggle for business or in the purchase and sale of large issues of such securities.

## SECTION 4.—AGENTS OF CONCENTRATION.

It is a fair deduction from the testimony that the most active agents in forwarding and bringing about the concentration of control of money and credit through one or another of the processes above described have been and are—

J. P. Morgan & Co.

First National Bank of New York.

National City Bank of New York.

Lee, Higginson & Co., of Boston and New York.

Kidder, Peabody & Co., of Boston and New York.

Kuhn, Loeb & Co.

We shall describe,

First, the members of this group separately, showing the part of each in the general movement and the ramifications of its influence;

Second, the interrelations of members of the group; and

Third, their combined influence in the financial and commercial life of the country as expressed in the greater banks, trust companies and insurance companies, transportation systems, producing and trading corporations, and public utility corporations.

## SECTION 5.—J. P. MORGAN &amp; CO.

*Organization.*—J. P. Morgan & Co. of New York and Drexel & Co. of Philadelphia are one and the same firm, composed of 11 members: J. P. Morgan, E. T. Stotesbury, Charles Steele, J. P. Morgan, jr., Henry P. Davison, Arthur E. Newbold, William P. Hamilton, William H. Porter, Thomas W. Lamont, Horatio G. Lloyd, and Temple Bowdoin. George W. Perkins was a member from 1902 until January 1, 1911. As a firm, it is a partner in the London banking house of J. S. Morgan & Co. and the Paris house of Morgan, Harjes & Co. (Morgan, R., 1004; Perkins, R., 1614.)

*General character of business.*—It accepts deposits and pays interest thereon and does a general banking business. It is a large lender of money on the New York Stock Exchange. More especially it acts as a so-called issuing house for securities; that is, as purchaser or underwriter or fiscal agent, it takes from the greater corporations their issues of securities and finds a market for them either amongst other banking houses, banks and trust companies, or insurance companies, or the general public. (Morgan, R., 1004, 1005, 1007, 1008.)

*Resources, deposits, and profits.*—Neither the resources and profits of the firm nor its sources of profit have been disclosed. Nor has your committee been able to ascertain its revenues from private purchases or sales of the securities of interstate corporations, nor from such of them as it controls under voting trusts, exclusive fiscal agency agreements, or other arrangements or influences, nor the identity of the banks, trust companies, life insurance companies, or other corporations that have participated in its security issues except where they were for joint account.

On November 1, 1912, it held deposits of \$162,491,819.65, of which \$81,968,421.47 was deposited by 78 interstate corporations on the directorates of 32 of which it was represented. (Ex. 154, R., 1339; Ex. 155, R., 1340.) The committee is unable to state the character of its affiliations, if any, with the 46 corporations on the directorates of which it is unrepresented by one or more members of the firm, as their identity was not disclosed.

*Security issues marketed.*—During the years 1902 to 1912, inclusive, the firm directly procured the public marketing of security issues of corporations amounting in round numbers to \$1,950,000,000, including only issues of interstate corporations. (Ex. 156, R., 1341.) The volume of securities privately issued or marketed by it, and of intrastate corporations, does not appear. Nor is there information available of the extent to which they participated as underwriters in issues made by banks or banking houses other than those shown on the charts and lists in evidence.

*Affiliations with Bankers Trust Co.*—The Bankers Trust Co. was organized in 1903. As part of the plan of organization the entire capital stock, except qualifying shares held by directors, was vested for five years by an agreement dated March 18, 1903, in three trustees, George W. Perkins, then a member of Morgan & Co., Henry P. Davidson, then vice president of the First National Bank of New York and since January 1, 1909, a member of Morgan & Co., and Daniel G. Reid, then vice president of the Liberty National Bank and a director in the United States Steel Corporation and of other affiliated corporations, who were authorized to vote the same for all

corporate purposes and especially for the election of directors and in favor of the acquisition of other trust companies. (Ex. 54, R., 656; Davison, R., 1815-1817.) On March 18, 1908, the agreement was renewed for a further period of five years. Before the expiration of that extension a new agreement was made, dated March 9, 1912, substituting George B. Case, of counsel for the company, as voting trustee in place of George W. Perkins, who had retired from the firm of Morgan & Co. Apparently Mr. Case was proposed by Mr. Davison, whose personal counsel he is. (Exs. 54, 55, and 56, R., 656-667; Davison, R. 1823.)

Mr. Davison's explanation that the voting trust was devised by the "young men" who organized the company, to protect them from being despoiled of their property by promoters then at large in Wall Street, does not seem adequate when it is considered that the first board of directors of the company comprised—

Stephen Baker, then about 40 years of age and president of the Bank of the Manhattan Co., one of the large banks.

Samuel G. Bayne, now in the neighborhood of 70, then president of the Seaboard National Bank, another of the great banks.

E. C. Converse, 61 or 62 years of age, a member of the executive committee of the United States Steel Co., and then president of the Liberty National Bank.

Mr. Davison himself.

James H. Eccles, then president of the Commercial National Bank of Chicago, a former Comptroller of the Currency, and a banker of great experience.

A. Barton Hepburn, about 45, and then vice president of the Chase National Bank, and of wide reputation and banking experience.

William Logan, of the Hanover National Bank.

Gates W. McGarrah, then president of the Leather Manufacturers' National Bank, and an important man in banking circles.

George W. Perkins, then a partner of Morgan & Co.

William H. Porter, then president of the Chemical National Bank.

Daniel G. Reid, then, among other things, vice president of the Liberty National Bank, a director of the United States Steel Corporation, and widely known in the financial world.

Albert H. Wiggin, then vice president of the National Park Bank.

Edward F. C. Young, since deceased, president of the First National Bank of Jersey City, then over 60.

Samuel Woolverton, then president of the Gallatin National Bank;

and

Robert Winsor, the leading partner in Kidder, Peabody & Co., one of the great international banking houses. (Davison, R., 1818-1821.)

Through the above-mentioned voting trust Morgan & Co. have the selection of the entire board of directors of the Bankers Trust Co. The firm and the individual members own \$946,400 par value of its stock, and Mr. Davison, Thomas W. Lamont, and William H. Porter, members of the firm, are directors of the trust company. On January 2, 1912, the firm had on deposit with it \$1,000,000. (Ex. 134-A, Interlocking Directorate Chart; Ex. 237; Ex. 219, R., 1948.)

The capital stock of the Bankers Trust Co. at the present time is \$10,000,000; surplus, \$10,000,000; undivided profits, \$5,084,000; resources, \$205,000,000; deposits, \$168,000,000. (Frew, R., 602;

Ex. 134-A; Exs. 57 to 66, 66a-66c.) It started, March 30, 1903, with a capital of \$1,000,000 and a surplus of \$500,000; and about six months later its deposits were \$5,748,000. (Frew, R., 600; Exs. 57 to 66, 66a-66c.)

In August, 1911, it absorbed the Mercantile Trust Co., one of the oldest and largest in New York, at that time controlled by the Equitable Life Assurance Society, a majority of whose stock was then, as now, owned by J. P. Morgan. In March, 1912, it absorbed the Manhattan Trust Co. (Frew, R., 605.)

Its unparalleled growth, whilst long established and efficiently managed and once powerful companies such as the Mercantile and Manhattan were declining until they were finally absorbed by this young rival, strikingly illustrates the power of Morgan & Co. and their allies.

*Affiliations with Guaranty Trust Co.*—In 1910 Henry P. Davison and William H. Porter, members of Morgan & Co., in association with others, purchased from the Mutual Life Insurance Co. and Mrs. Harri-man 12,000 shares—6,000 from each—of the capital stock of the Guaranty Trust Co., out of a total of 20,000. Their purpose—subsequently abandoned—was to merge this company into the Bankers, which Morgan & Co. already controlled. At the same time the new holders, and upon their invitation the other stockholders also, by an agreement dated January 3, 1910, vested their shares in three trustees, Mr. Davison, Mr. Porter, and George F. Baker, president of the First National Bank, with authority to vote them for all corporate purposes and especially in the selection of the board of directors and in favor of acquiring other companies. (Davison, R., 1812-1817, 1824, 1826.)

Through this voting trust, therefore, Morgan & Co. controls absolutely the Guaranty Trust Co. Of its capital stock of \$10,000,000 the firm and individual members own \$844,600 par value, and Mr. Davison, Mr. Porter, and Mr. Lamont, members of the firm, are directors of the trust company. On January 2, 1912, the firm had on deposit with it \$1,101,000. (Ex. 237; Ex. 134-A; Ex. 219, R. 1948.)

Since the acquisition by Morgan & Co. of control of this trust company the latter has absorbed three others—the Morton Trust Co., the Fifth Avenue Trust Co., and the Standard Trust Co. (Davison, R., 1871.) Its resources are \$232,000,000 and its deposits \$189,000,000. (Ex. 134-A.)

The Guaranty and Bankers Trust Cos., thus controlled by Morgan & Co. through voting trusts, are, respectively, in point of resources and deposits, the first and second largest trust companies in the United States; nor is the former outranked in the amount of deposits by any bank of the country, and the latter by one only. Their combined resources are \$437,000,000; their combined deposits, \$357,000,000.

*Affiliations with Astor Trust Co.*—Mr. Davison, Mr. Lamont, and Mr. Porter are directors of this trust company. Including them, it also has 14 directors in common with the Bankers Trust Co. and 11 in common with the Guaranty. Its executive committee, of which Mr. Davison is chairman, is composed entirely of directors of the former. Ex. 134-A; Davison, R., 1811.) Its resources are \$27,000,000; deposits, \$23,000,000.

*Affiliations with National Bank of Commerce.*—Including the holdings of individual members of that firm, Morgan & Co. own \$1,686,900 par value of the \$25,000,000 of capital stock of the National Bank of

Commerce, and Mr. Davison and J. P. Morgan, jr., are directors thereof. Moreover, including the former, 12 directors of the Guaranty Trust Co., which is controlled by Morgan & Co., are directors of this bank. On January 1, 1912, it held deposits of Morgan & Co. to the amount of \$1,084,000. Its resources are \$190,000,000; deposits, \$102,000,000. (Morgan R., 1037; Ex. 237; Ex. 134-A; Ex. 219, R., 1948.)

*Affiliations with Liberty National Bank.*—Mr. Davison is a director and chairman of the executive committee of this bank. Including him, it also has seven directors in common with the Bankers Trust Co. and five in common with the Guaranty; and a majority of its executive committee is composed of directors and the attorney of the former. Its resources are \$29,000,000; deposits, \$22,000,000. (Davison, R., 1810; Ex. 134-A.)

*Affiliations with Chemical National Bank.*—Mr. Davison and Mr. Porter are directors of this bank, the latter having been its president until he resigned in order to join the Morgan firm. Including them, four of its eight directors are directors of the Guaranty Trust Co. On January 2, 1912, Morgan & Co. had on deposit with it \$837,000. Its resources are \$40,000,000; deposits, \$25,000,000. (Ex. 134-A.)

*Affiliations with Equitable Life Assurance Society.*—J. P. Morgan now owns and has owned since 1910 a majority of the capital stock of this great company, the resources of which are \$504,000,000. (Morgan, R., 1067.)

*Summary of affiliations with financial corporations.*—Morgan & Co. and their nominees thus control or have a powerful voice in banks and trust companies in the city of New York with resources of \$723,000,000. Its own resources are unknown, but adding only its deposits, \$162,000,000, the amount becomes \$885,000,000; adding the resources of the Equitable Life, it becomes \$1,389,000,000.

*Affiliations with New York Central & Hudson River Railroad and subsidiaries.*—Mr. Morgan is a director and member of the executive and finance committees, of the New York Central & Hudson River Railroad, and the firm is a stockholder. (Morgan, R., 1008, 1013; Ex. 238.) It is the sole fiscal agent for that company and its principal subsidiaries—the Lake Shore & Michigan Southern, the Michigan Central, and the Cleveland, Cincinnati, Chicago & St. Louis Railroads; that is, sole agent to market their issues of securities. (Morgan, R., 1008; Ex. 142, R., 1098.) Since 1897, it has procured the marketing for them of 67 issues amounting to upward of \$550,000,000. (Exs. 235, 236, R., 2127, 2140.) It has procured the marketing for two other subsidiaries, the Boston & Albany and the New York, Chicago & St. Louis, of five issues aggregating \$40,000,000 since 1901. (Exs. 235, 236, R., 2127, 2140.) The capital stock and funded debt of the system is \$1,150,000,000, and it controls 13,000 miles of road. (Ex. 134-A.)

*Affiliations with New York, New Haven & Hartford Railroad and subsidiaries.*—Mr. Morgan is a director of the New York, New Haven & Hartford Railroad and the firm is a stockholder. (Ex. 134-A, Ex. 238.) It is also sole fiscal agent for it and its principal subsidiaries—the Boston & Maine and the Maine Central Railroads. (Morgan, R., 1008, Ex. 141, R., 1096.) Since 1904 it has procured for them the marketing of 17 issues of securities amounting approximately to \$188,000,000. (Exs. 235, 236, R., 2127, 2140.)

The capital stock and funded debt of the New Haven system proper is \$385,000,000, and it controls 2,000 miles of road. (Ex. 134-A.)

*Affiliations with the Northern Pacific Railway.*—Morgan & Co. directed the reorganization of this company and became its fiscal agent, while Mr. Morgan became one of the three trustees to vote its stock under an agreement since expired. (Morgan, R., 1018, 1042; Davison, R., 1865.)

It is admitted that upon the expiration of these railroad voting trusts the directors named by the voting trustees have continued undisturbed, except where death required the filling of vacancies, and that these vacancies are usually filled by the remaining directors. (Morgan, R., 1044; Baker, R., 1499.)

Mr. Lamont, Mr. Morgan, jr., and Mr. Steele, of Morgan & Co., are now directors. (Ex. 134-A.) The firm is also a stockholder and a depositary for the funds of the company, and as fiscal agent has procured the marketing of its securities, including the issue of \$215,155,000 made jointly in 1901 with the Great Northern Railway for the purpose of acquiring the stock of the Chicago, Burlington & Quincy Railroad. (Ex. 238; Exs. 235, 236, R., 2127, 2140.) It has a capital stock and funded debt of \$439,000,000, and controls 7,000 miles of road exclusive of the Chicago, Burlington & Quincy. (Ex. 134-A.)

*Affiliations with Southern Railway.*—Drexel, Morgan & Co. reorganized this system in 1894, and its stock is and always has been held since 1894 by Mr. Morgan, Mr. George F. Baker, and Mr. Charles Lanier as voting trustees. (Morgan, R., 1017-1019; Baker, R., 1523, 1524, 1559; Exs. 221, 222, R., 1949, 1952.) Mr. Steele is a director. (Ex. 134-A.) The firm is also a stockholder and the fiscal agent of the company, and since 1905 has procured for it the marketing of 32 issues of securities, aggregating approximately \$130,000,000. (Ex. 238; Morgan, R., 1017; Davison, R., 1826, 1827; Exs. 235, 236, R., 2127, 2140.) The capital stock and funded debt of the system is \$420,000,000 and it controls 7,000 miles of road. (Ex. 134-A.)

*Affiliations with Reading Co.*—In 1896 the Philadelphia & Reading Railroad was reorganized by Morgan & Co. as the Philadelphia & Reading Railway, the stock of which, with that of the Philadelphia & Reading Coal & Iron Co., was vested in Reading Co., a holding corporation, which subsequently acquired, through the agency of Morgan & Co., a majority of the stock of the Central Railroad of New Jersey, which controlled the Lehigh & Wilkes-Barre Coal Co. Incident to the reorganization there was created a voting trust, since expired, and Mr. Morgan became one of the voting trustees. (Morgan, R., 1041-1044.) Mr. Stotesbury is a director and the firm a stockholder of Reading Co., and Mr. Steele and Mr. Stotesbury are directors of the Central Railroad of New Jersey. (Ex. 134-A; Ex. 238.) The marketing of the only security issues of the company in recent years was procured by the firm. (Ex. 235, R., 2137.) The capital stock and funded debt of the system is \$366,000,000; its subsidiary railroads transport one-third of the anthracite coal moving from the mines and its subsidiary coal companies control approximately 63 per cent of the entire anthracite deposits. (Ex. 134-A; Baker, R., 1507.)

*Affiliations with Erie Railroad.*—Mr. Morgan was one of the three voting trustees of this company from the time of its reorganization

by his firm in 1895 until the dissolution of the voting trust. (Morgan R., 1041-1043.) Mr. Steele and Mr. Hamilton are directors, as are Mr. Perkins, until recently a member of Morgan & Co., and Mr. Stetson, their counsel. (Ex. 134-A.) Morgan & Co. is also a stockholder. (Ex. 238.) Since 1900 the firm has procured for the company the marketing of issues of securities aggregating approximately \$100,000,000. (Ex. 235, R., 2130.) The capital stock and funded debt of the system is \$418,000,000, and it controls 2,000 miles of road, being one of the principal carriers of anthracite coal, a large production of which it controls through subsidiary mining companies, the largest of which, the Pennsylvania Coal Co., it acquired in 1901 through the agency of Morgan & Co. It has also controlled since 1898, through stockownership, the New York, Susquehanna & Western Railroad a rival carrier of anthracite coal, and in the directorate of which Morgan & Co. has four representatives. (Baker, R., 1477-1479, 1514, 1515.)

*Affiliations with Lehigh Valley Railroad.*—Mr. Steele and Mr. Stotesbury are directors of this road—another of the leading carriers of anthracite coal, a large production of which it controls through subsidiary mining companies. In 1909 the marketing of an issue of \$3,000,000 of its bonds was procured by Morgan & Co. Its capital stock and funded debt is \$130,000,000. (Ex. 134-A; Ex. 235, R., 2131; Baker, R., 1507.)

*Affiliations with Chicago Great Western Railroad.*—Morgan & Co. only recently reorganized this road, and Mr. Morgan is a voting trustee, together with George F. Baker, and Robert Fleming, of London. Mr. Steele is a director. The marketing of its securities was procured by the firm, which is also a stockholder. It has a capital stock and funded debt of \$128,000,000, and controls about 1,000 miles of road. (Morgan, R., 1041, 1042; Baker, R., 1523; Ex. 235, R., 2129; Ex. 134-A.)

*Affiliations with Atchison, Topeka & Santa Fe Railway.*—Mr. Steele is a director and the firm is a stockholder, and since 1902 has procured the marketing of nine security issues of the company, aggregating approximately \$195,000,000. Its capital stock and funded debt is \$627,000,000, and it controls 11,000 miles of road. (Ex. 134-A; Ex. 235, R., 2127; Ex. 238.)

*Affiliations with Pere Marquette Railroad.*—This road was also reorganized through Morgan & Co. Mr. Porter and Mr. Perkins are directors; the firm is a stockholder and fiscal agent and in 1911 procured the marketing of an issue of \$8,000,000 of its securities. Its capital stock and funded debt is \$95,000,000 and it controls 2,000 miles of road. (Ex. 134-A; Ex. 235, R., 2137; Ex. 238; Morgan, R., 1008.)

*Affiliations with Cincinnati, Hamilton & Dayton Railway.*—Mr. Morgan is one of the three voting trustees of this company. (Ex. 134-A.) His firm were the syndicate managers and controlled the recent reorganization of the property. (Morgan, R., 1043.)

*Affiliations with International Mercantile Marine Co.*—This company was organized in 1902 by Morgan & Co. to take over various steamship lines—among them, the American, the Atlantic Transport, the Dominion, the Leyland, the National, the Red Star, and the White Star Lines. (Morgan, R., 1041.) Its stock at the time was vested and has remained in a voting trust, Mr. Morgan and Mr. Steele being

two of the five voting trustees. (Morgan, R., 1044.) Mr. Morgan, jr., Mr. Steele, and Mr. Perkins are directors. (Ex. 134-A.) The firm markets the securities of the company and is also a stockholder. (Exs. 235, 236, R., 2127, 2140.) Its capital stock and funded debt is \$173,000,000 and its annual gross income around \$39,000,000. (Ex. 134-A.)

*Affiliations with other transportation systems.*—Mr. Steele is a director of the Adams Express Co. (Ex. 134-A.)

Mr. Coster, then a member of Morgan & Co., was a voting trustee of the stock of the Baltimore & Ohio Railroad Co. following its reorganization in 1899. (Ex. 200, R., 1716.)

Mr. Morgan is a director of the New York, Ontario & Western Railway Co. and the firm procured the marketing for it of a security issue of \$2,000,000. (Ex. 134-A; Ex. 235, R., 2136.)

The firm is fiscal agent of the Chicago, Indianapolis & Louisville Railroad Co. and the Chicago & Western Indiana Railroad Co., and as such marketed for the former in 1899 an issue of \$7,750,000 of stock and for the latter between 1904 and 1912 six issues, aggregating approximately \$17,000,000. (Morgan, R., 1007, 1008; Ex. 235, R., 2129, 2130.)

It has procured the marketing, generally in joint account with certain other banking houses, as will hereafter appear, of the security issues of other railroad companies, as follows:

Atlantic Coast Line Co., six issues since 1902, aggregating \$49,000,000.

Louisville & Nashville Railroad Co., seven issues since 1902, aggregating \$90,000,000.

Central of Georgia Railway Co., three issues since 1900, aggregating \$18,500,000.

Chesapeake & Ohio Railway Co., 18 issues since 1899, aggregating \$73,000,000.

Chicago, Burlington & Quincy Railroad Co., six issues since 1902, aggregating \$81,000,000.

Hocking Valley Ry., 19 issues since 1899, aggregating \$28,000,000.

Elgin, Joliet & Eastern Railroad Co., two issues in 1898 and 1907, \$7,915,000.

Florida East Coast Railway Co., one issue in 1909, \$10,000,000.

Great Northern Railway Co., one issue in 1911, \$20,000,000.

Illinois Central, one issue in 1905.

Kansas City Terminal Railway Co., four issues since 1910, aggregating \$31,400,000.

Pennsylvania Railroad Co., one issue in 1905 of \$100,000,000.

Portland Terminal Co., one issue in 1912, \$4,500,000.

St. Louis & San Francisco Railway Co., two issues in 1903, \$6,265,000.

Terminal Railroad Association of St. Louis, five issues since 1902, aggregating \$14,700,000.

Toledo, Canada Southern & Detroit Railroad Co., one issue in 1906, \$1,600,000.

Wabash Railroad Co., one issue in 1906, \$6,180,000. (Ex. 235, R., 2127-2139; Ex. 236, R., 2140.)

*Affiliations with United States Steel Corporation.*—The organization of this corporation, including the underwriting of \$1,014,446,400 of

stock and \$304,000,000 of bonds, par value, was directed and absolutely dominated by Morgan & Co. Mr. Morgan approved the prices at which the stocks of the various constituent companies were taken over, and named the entire first board of directors. No director has been chosen since without his approval. He designated Judge Gary to succeed Mr. Perkins, of his firm, as chairman of the finance committee, which also exercises the powers of an executive committee. (Morgan, R., 1024-1026; R., 1800-1802.) Mr. Morgan, Mr. Steele, Mr. Morgan, jr., and Mr. Perkins are directors, and the last two named are members of the finance committee. (Ex. 134-A; Morgan, R., 1026; Perkins, R., 1615, 1616.) The firm is fiscal agent and a depository of the corporation, and also a stockholder. (Morgan, R., 1013, 1027.) In 1902 it procured for the corporation the marketing of an issue of \$100,000,000 of bonds, and in 1911 and 1912, for the Illinois & Indiana Steel Cos., and the National Tube Co., subsidiaries, issues of \$15,500,000, \$15,000,000, and \$10,000,000, respectively. (Ex. 235, R., 2139.) The capital stock and funded debt of the corporation is \$1,440,000,000, and its annual gross earnings are upward of \$600,000,000. (Ex. 134-A.)

*Affiliations with International Harvester Co.*—This corporation was organized by Morgan & Co. (Perkins, R., 1617.) Mr. Perkins, who was the partner actively in charge of the matter, named the first board of directors and became chairman of the finance committee and one of three voting trustees in whom the stock of the company was vested as part of the plan of organization. (Perkins, R., 1617, 1618.) He is still a director and chairman of the finance committee; the voting trust expired August 1, 1912. (Perkins, R., 1618.) Mr. Steele is also a director. (Ex., 134-A.) The firm is a stockholder, and has marketed for the company since its organization securities to the amount of \$40,500,000. (Ex. 238; Ex. 235, R., 2131.) Its capital stock and funded debt is \$160,000,000 and its annual gross earnings are around \$108,000,000. (Ex. 134-A.)

*Affiliations with General Electric Co.*—Morgan & Co. was one of the organizers of this company and had two representatives, J. P. Morgan and Charles H. Coster, on its first board of directors. Mr. Morgan and Mr. Steele are now directors. (Ex. 134-A.) The firm is a stockholder and a depository of the company and markets its security issues. (Ex. 238; Ex. 235, R., 2131; Davison, R., 1874.) Its capital stock and funded debt is \$113,000,000 and its annual gross earnings are around \$73,000,000. (Ex. 134-A.)

*Affiliations with other producing and trading corporations.*—Mr. Lamont is a director of the J. I. Case Threshing Machine Co. and the firm is a stockholder thereof and in 1912 procured to be marketed for it an issue of \$8,000,000 stock. (Ex. 238; Ex. 235, R., 2131.)

The firm is a stockholder of the United Dry Goods Co., has a representative in its directorate, and in 1909 and 1910 procured to be marketed for it issues of \$14,189,400. (Ex. 238; Ex. 235, R., 2131; Davison, R., 1867.)

Mr. Stotesbury is one of three voting trustees of the William Cramp Ship & Engine Building Co. and a director of the Baldwin Locomotive Works, and the firm (Drexel & Co., Philadelphia) has marketed the securities of each. (Morgan, R., 1044; Baker, R., 1528, 1529.)

Mr. Morgan is a director of the Pullman Co. (Ex. 134-A.)

Mr. Lamont is a director of the Westinghouse Electric & Manufacturing Co. and a voting trustee of the International Agricultural Corporation. (Ex. 134-A; Davison, R., 1866.)

It has procured, generally in joint account, as will hereafter appear, the marketing of issues of securities of other producing and trading corporations as follows:

American Agricultural Chemical Co., \$800,000 in 1908 and \$4,000,000 in 1911.

Associated Merchants Co., \$5,000,000 of stock in 1901.

Atlas Portland Cement Co., \$4,000,000 in 1910.

Cudahy Packing Co., \$4,000,000 in 1909.

Hartford Carpet Co., in 1901.

Keystone Coal & Coke Co., \$5,300,000 in 1911.

United Fruit Co., \$4,250,000 in 1908.

United States Motor Co., \$1,750,000 in 1910.

United States Rubber Co., \$8,000,000 in 1908.

Virginia-Carolina Chemical Co., \$7,000,000 in 1903.

Western Electric Co., \$6,250,000 in 1910. (Ex. 235, R., 2127, 2139.)

*Affiliations with American Telephone & Telegraph Co.*—Mr. Davison is a director and the firm is a stockholder and since 1906 has procured, generally in joint account with affiliated banks and bankers as will hereafter appear, the marketing of four issues of its securities aggregating approximately \$240,000,000; four issues of the New York Telephone Co., a subsidiary, aggregating \$37,500,000; an issue of \$5,000,000 of the Chicago Telephone Co., another subsidiary; and an issue of \$16,500,000 of the Pacific Telephone & Telegraph Co., still another subsidiary. (Ex. 235, R., 2127; Ex. 238.) Its capital stock and funded debt is \$621,000,000 and its annual gross income around \$179,000,000. (Ex. 134-A.)

*Affiliations with Western Union Telegraph Co.*—Mr. Morgan and Mr. Davison are directors. Its capital stock and funded debt is about \$160,000,000 and its annual gross earnings around \$40,000,000. (Ex. 134-A.)

*Affiliations with Interborough Rapid Transit Co.*—Morgan & Co. are its bankers, and the head of a syndicate to purchase an impending bond issue by it of about \$170,000,000. It operates the subways in the city of New York. Excluding the impending issue, its capital stock and funded debt is \$84,000,000. Its stock is owned by the Interborough Metropolitan Co., the capital stock and funded debt of the entire system being \$364,000,000. (Baker, R., 1553-1555; Davison, R., 1849-1853; Ex. 134-A.)

*Affiliations with Hudson & Manhattan Co.*—This company owns and operates the tunnels under the Hudson River connecting New York and New Jersey. Morgan & Co. procured the marketing of its security issues and is itself a large holder thereof. Kuhn, Loeb & Co., however, are directing the readjustment of its debt now under way. Its capital stock and funded debt is about \$97,000,000. (Baker, R., 1554; Schiff, R., 1669, 1670; Ex. 134-A.)

*Affiliations with Philadelphia Rapid Transit System.*—Mr. Stotesbury and Mr. Lloyd, members of the firm, are directors of the company. Its capital stock and funded debt is \$134,000,000 and its annual gross earnings around \$23,000,000. (Ex. 134-A.)

## SECTION 6.—THE FIRST NATIONAL BANK OF NEW YORK.

*Organization, capital, and management.*—The First National Bank was organized in 1863, with a capital stock of \$300,000, which was increased the next year to \$500,000, where it remained until 1901, when it was increased to \$10,000,000—100,000 shares—through the declaration of a special dividend of \$9,500,000—1900 per cent on the existing capital stock. (Ex. 194, R., 1479; Baker, R., 1420-1422.) The surplus is now \$15,000,000; and undivided profits are \$5,896,827. (Ex. 194, R., 1479.) The directors are George F. Baker, George F. Baker, jr., James A. Blair, Henry P. Davison, H. C. Fahnestock, A. B. Hepburn, James J. Hill, F. L. Hine, A. C. James, Thomas W. Lamont, J. J. Mitchell, William H. Moore, J. P. Morgan, and C. D. Norton, of whom Mr. Baker, Mr. Morgan, Mr. Hepburn, and Mr. Hine constitute the executive committee. Mr. Hine is president. (Ex. 134-A; Hine, R., 2020, 2021.)

Among the principal stockholders are George F. Baker with 20,000 shares out of a total of 100,000; his son, George F. Baker, jr., with 5,050; Morgan & Co. with 14,500; Henry P. Davison with 1,000; Thomas W. Lamont with an amount not stated, but less than 1,000; Francis L. Hine with 1,600; James J. Hill, with 3,900; the Mutual Life Insurance Co. of New York with 1,000; and Mrs. Mary Clark Thompson, whose holdings of 9,000 shares are voted by proxy which in the last annual election was held by three gentlemen, one of whom was a partner of Morgan & Co., and the other president of the Chase National Bank, which, as will later appear, has long been controlled by the First National. (Baker, R., 1435, 1436; Ex. 212, R., 1894.)

*George F. Baker its ruling spirit.*—From 1874 until recently Mr. Baker was president and is now chairman of the board of directors and of the executive committee; as stated, he owns 20,000 and his son 5,050 of its 100,000 shares of capital stock; and for more than a generation has controlled and dominated its management. (Baker, R., 1419, 1436, 1437.)

*General character of business.*—Besides doing the ordinary business of a national bank, it acts as an "issuing house" (defined above) for corporate securities, usually in syndicates with other such houses, rarely alone; and is also a large lender of money on the New York Stock Exchange. It has approximately \$43,000,000 invested in bonds; it directly owns no stocks. (Baker, R., 1519; Hine, R., 2030, 2031; Ex. 133, R., 1201.)

*Resources, deposits, and profits.*—Its resources, in round figures, are \$150,000,000; deposits, \$106,000,000, of which, on January 1, 1912, \$32,426,854.48 belonged to 155 interstate corporations, names not disclosed. (Ex. 198, R., 1571; Baker, R., 1495; Ex. 134-A.)

From 1889 to 1901 dividends were paid at the rate of 100 per cent per annum on a capital stock of \$500,000. In 1901 there was a dividend of \$10,750,000—2,150 per cent—\$9,500,000 of which was declared for the purpose of increasing the capital stock to \$10,000,000. Yearly dividends on the increased capital stock have been—

	Per cent.
1902, 1903, and 1904.....	20
1905.....	26½
1906.....	26½
1907.....	32

	Per cent.
1908.....	126
1909 and 1910.....	28
1911.....	38
1912.....	33

making total dividends for 11 years, 398 per cent on its increased capital of \$10,000,000, or an aggregate of \$39,800,000. (Baker, R., 1420-1422; Ex. 194, R., 1479.)

The present market value of the stock is upward of \$1,000 a share. (Davison, R., 1880.)

*Affiliations with the First Security Co.*—This company was organized in February, 1908, under the laws of New York with a capital stock of \$10,000,000, by stockholders of the First National Bank, who authorized the officers of the bank to subscribe for and hold the stock of the new company as trustees under an agreement requiring that the stock of the security company shall always be owned by the same persons who own the stock of the bank and in the same proportions, and that no person not a director of the bank shall be a director of the security company. The agreement also provides that the trustees shall always be the president, vice presidents, and cashier of the bank for the time being. The stock of the security company was paid for out of a special dividend of \$10,000,000 declared by the bank. (Baker, R., 1420-1424, 1427-1435, 1491, 1492, 1497, 1498; Hine, 2021-2029; Morgan, R., 1035, 1036; 1074-1078; Ex. 195, R., 1481; Ex. 196, R., 1485.) The certificates of stock of the bank bear the following indorsement (Ex. 195, R., 1482-1483):

The registered holder of the within certificate is entitled for and in respect of each and every share of stock of the First National Bank of the city of New York represented thereby to share equally and ratably with all holders of stock certificates of the bank similarly indorsed, according to their several interests, in the dividends or profits and, in case of dissolution, in the distribution of the capital of the First Security Co., a corporation of the State of New York, organized in pursuance of a certain written agreement dated February 14, 1908, between George F. Baker and others, trustees, and J. Pierpont Morgan and others, stockholders; such interest of the owner of the within certificate and of all other like certificates, similarly indorsed, being subject to all the terms, conditions, and limitations of said agreement, such ratable interest to be sold or transferred ratably only by the transfer upon the books of the bank of one or more of the shares of the stock in the bank represented by a bank stock certificate bearing this indorsement; and all of the interest in and to or in respect of said security company or its capital stock, represented by a bank stock certificate bearing this indorsement, shall pass ratably with and only with the transfer of such shares of the bank represented by such bank stock certificate, and upon transfer thereof upon the books of the bank and an interest in the security company attached to any share of the bank shall be alienable only in connection with such transfer of such bank stock.

No holder of the within certificate or any transferee of any share thereby represented shall be entitled in lien thereof to demand or to receive from the bank a new certificate except with this indorsement thereon; and a transfer of any share of bank stock represented by the within bank stock certificate shall be made by any holder thereof only to a transferee accepting thereof a new certificate bearing his indorsement.

No right to vote upon or in respect of any stock of the security company passes to or shall be exercised by the holder of the within certificate, such right being reserved to and by the trustees or their successors.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
By \_\_\_\_\_ Trustees.  
Agent.

In accordance with the agreement, the security company has always had the same directors as the bank. Mr. Baker, chairman of the board of directors of the bank, and Mr. Hine, its president, are, respectively, president and vice president of the security company. The business of the two institutions is conducted in the same offices and through the same officers and clerks. (Baker, R. 1431; Hine, R., 2043.)

The purpose of the stockholders of the bank in organizing the security company was to continue together in a kind of business—buying, selling, dealing in, and holding corporate stocks—which some years before the bank had been advised by the Comptroller of the Currency it could not lawfully do. (Baker, R., 1431, 1432.)

The bank thereupon sold to the security company at the cost of these stocks to the bank many years before and irrespective of their then value, the stocks of many railroad and industrial corporations, including among the former stocks of the Delaware, Lackawanna, & Western, the Lehigh Valley, the Great Northern, the Northern Pacific, and the Southern. The largest holdings were in the anthracite shares. (Baker, R., 1427, 1428, 1505, 1530; Hine, R., 2021–2029.)

Prior to this time Mr. Baker had accumulated in the interest of the bank, but not with its funds, shares of other banks, including 28,632 out of a total of 50,000 in the Chase National Bank, 5,400 in the National Bank of Commerce, 2,500 in the Bankers Trust Co., 928 in the Liberty National Bank, 200 in the Astor Trust Co., 250 in the New York Trust Co., 50 in the Brooklyn Trust Co., all of New York; 500 in the First National Bank of Minneapolis and 200 in the Minneapolis Trust Co. These he turned over to the security company at cost. (Baker, R., 1427–1429; Hine, R., 2025.)

The company has paid dividends since its organization at the rate of 12 per cent per annum—17 per cent last year; and in addition has accumulated in its four years of existence a surplus of \$4,000,000—40 per cent of its capital stock. (Baker, R., 1433.)

The assets of the security company are carried on the books at a nominal valuation—the price it paid for them, which was the price paid by the bank and Mr. Baker many years ago. The officers did not wish to disclose the true value. When pressed, the vice president stated \$35,000,000 as the value of the securities for which the security company paid the bank \$10,000,000, but acknowledged that to be a very conservative estimate. (Hine, R. 2027, 2028.)

*Affiliations with the Chase National Bank.*—Mr. Baker and his son, George F. Baker, jr., Mr. Hine, Mr. Hill and Mr. Hepburn, directors of the First National, are five of the nine directors of the Chase National Bank, and Grant B. Schley, Mr. Baker's brother-in-law, is a sixth. (Ex. 134-A.) As before stated, prior to 1908, Mr. Baker acquired in the interest of the First National 28,632 shares—a majority—of the stock of the Chase Bank, transferring them in that year to the First Security Co.—an arm of the First National. A few days before Mr. Baker appeared before the committee 15,000 of the shares were sold, at his suggestion, as he testified, to Mr. Wiggins, president of the Chase Bank. The witness declined to state the price per share that was paid for the stock. No change in the management was contemplated, however, and, in fact, subsequent to the

sale the old directors were all reelected. (Baker, R., 1424-1430, 1440, 1496-1499.)

The capital stock of the Chase Bank is \$5,000,000, having been increased from \$1,000,000 in 1906 through the declaration of a dividend of 400 per cent. It has paid dividends on the increased capital at the rate of 20 per cent and has a surplus of \$9,000,000. It is one of the principal correspondents of out-of-town banks, holding deposits of over 3,000 of them, and is known as the bank of banks. It has resources of \$150,000,000 and deposits of about \$128,000,000, and is one of the largest lenders on the New York Stock Exchange. (Baker, R., 1500, 1501; Ex. 133, R., 1198.)

*Affiliations with National Bank of Commerce.*—The First Security Co. owns \$540,000 and Mr. Baker \$460,000 par value, of the capital stock, and Mr. Baker, chairman of the board, and Mr. Hine, president of the First National, are directors, the latter being also a member of the executive committee. (Baker, R., 1428, 1460; Hine, R., 2021; Ex. 134-A.)

*Affiliations with Liberty National Bank.*—The First Security Co. is a stockholder and Mr. Hine is a director and member of the executive committee. (Baker, R., 1428; Ex. 134-A.)

*Affiliations with Astor Trust Co.*—Mr. Baker and associates organized the Astor National Bank, subsequently converting it into the Astor Trust Co. He and Mr. Hine are directors and he and the First Security Co. are small stockholders. (Baker, R., 1428, 1447, 1460; Ex. 134-A.)

*Affiliations with Bankers Trust Co.*—The First Security Co. owns \$250,000 and Mr. Baker \$150,000, par value, of the capital stock; Mr. Hepburn, Mr. Hine, and Mr. Norton are directors, and Daniel G. Reid, a stockholder of the First National, is one of the three voting trustees. (Baker, R., 1428, 1460; Hine, R., 2025; Ex. 134-A.)

*Affiliations with Guaranty Trust Co.*—Mr. Baker owns \$100,000 of the capital stock, par value, and is one of the three voting trustees. (Baker, R., 1447-1450, 1460.)

*Affiliations with Illinois Trust & Savings Bank of Chicago.*—Mr. Mitchell, president of this bank, is a director in the First National and Mr. Hill is a director of both. (Ex. 134-A.)

*Affiliations with Mutual Life Insurance Co.*—Mr. Baker, in length of service, is the oldest trustee and member of the finance committee, and until recently has been very active in the management. Mr. Peabody, president of the company, at the time of his election was counsel for the First National Bank, of which Mr. Baker was the head. Mr. Fisher A. Baker, of the law firm of which Mr. Peabody was a member, is an uncle of Mr. George F. Baker. Mr. Peabody had never before been a director or in any way connected with a life insurance company, and had no knowledge of the business. (Baker, R., 1471, 1472; Peabody, R., 1310, 1311.)

Its resources are \$587,000,000. (Ex. 134-A.)

*Summary of affiliations with financial corporations.*—It thus appears that the First National Bank and the First Security Co. are one and the same association of persons; that for a number of years past, and until within a few weeks, they have had a clear majority of the stock of the Chase National Bank and still retain a large block and a controlling voice in the management through majority representation upon the board of directors; and that these three institutions have known resources of \$335,000,000.

*Affiliations with the anthracite coal-carrying railroads.*—Through stock ownership by the First Security Co. and Mr. Baker and interlocking directors the First National Bank is affiliated with the following railroad systems transporting 80 per cent of the anthracite coal moving from the mines and owning or controlling 88 per cent of the entire deposits of anthracite in the State of Pennsylvania, as follows:

(1) Delaware, Lackawanna & Western Railroad: The First Security Co. and Mr. Baker individually are very large stockholders, and besides Mr. Baker, his son, George F. Baker, jr., Mr. Moore, and Mr. Fahenstock, of the bank's directorate, are directors of the railroad. (Baker, R., 1504-1510; Ex. 134-A.)

(2) Lehigh Valley Railroad: The First Security Co. is a large stockholder and Mr. Baker and Mr. Moore are directors. (Baker, R., 1504-1510; Ex. 134-A.)

(3) Central Railroad of New Jersey: Mr. Baker and his associates were the largest stockholders of this road for many years prior to 1901, when they transferred a majority interest to Reading Co. Mr. Baker is still a large stockholder and a director, and H. C. Fahnestock, of the bank's directorate, is also a director. (Baker, R., 1504-1510; Ex. 134-A.)

(4) Reading Co., Erie Railroad, New York, Susquehanna & Western Railroad (now controlled by the Erie), and New York, Ontario & Western Railway: Mr. Baker is a director in each. (Ex. 134-A.)

*Affiliations with the Chicago, Rock Island & Pacific System.*—Mr. Hine, president, and three other directors of the bank, are directors in this system, as is Daniel G. Reid, a stockholder of the bank. (Ex. 134-A.)

*Affiliations with Southern Railway.*—The first Security Co. and Mr. Baker are large stockholders and the latter is one of the three voting trustees, the others being Mr. Morgan and Mr. Lanier. George F. Baker, jr., and H. C. Fahnestock, of the bank's directorate, are directors of the railway. (Baker, R., 1523, 1524; Ex. 134-A.)

*Affiliations with Chicago, Burlington & Quincy Railroad.*—Mr. Baker and Mr. Hill of the bank's directorate are directors of this company, which has capital stock and funded debt of \$292,000,000 and operates 9,000 miles of road. In conjunction with others, the bank has marketed its security issues. (Ex. 134-A; Ex. 213, R., 1895.)

*Affiliations with Great Northern Railway.*—The bank is its fiscal agent, in effect, and in 1911, in conjunction with Morgan & Co., marketed for it a bond issue of \$20,000,000—the only one it has made. Mr. Baker and the First Security Co. are large stockholders. Mr. Hill, builder and head of the railway, is a director of the bank and owns 3,900 of its shares. The system comprises 7,000 miles of road and its capital stock and funded debt is \$385,000,000. (Davidson, R., 1865; Baker, R., 1529, 1530, 1553; Ex. 212, R., 1894; Ex. 134-A.)

*Affiliations with Northern Pacific Railway.*—Mr. Baker and the First Security Co. are large stockholders, the former being also a director and member of the executive committee, while his son and A. C. James are likewise directors. (Baker, R., 1530; Ex., 134-A.)

*Affiliations with other transportation systems.*—With Mr. Morgan, Mr. Baker is a voting trustee of the Chicago Great Western Railway and a director of the New York Central Lines and the New York,

New Haven & Hartford; he is also a trustee of Adams Express Co. (Ex. 134-A.)

*Affiliations with United States Steel Corporation.*—Mr. Baker is a director and member of the finance committee of the corporation, and he, as also the bank, were among the underwriters of its bond and stock issues at the time of organization. The bank has also joined with Morgan & Co. in marketing for it subsequent security issues. Mr. Moore, of the bank's directorate is a director of the corporation, and was a large holder of the stocks of constituent companies acquired by it. (Baker, R., 1543-1545; Ex. 213, R., 1895.)

*Affiliations with William Cramp Ship & Engine Building Co.*—Mr. Baker is one of three voting trustees, a second being Mr. Stotesbury, of Morgan & Co. F. L. Hine is a director. (Ex. 214, R., 1897.)

*Affiliations with J. I. Case Threshing Machine Co.*—Mr. Hine, president of the bank, is one of three voting trustees. (Ex. 214, R., 1897.)

*Affiliations with International Harvester Co.*—Mr. Baker was a director until recently. (Baker, R., 1555, 1556.)

*Affiliations with Pullman Co.*—Mr. Baker and Mr. Mitchell, of the bank's directorate, are directors. (Ex. 134-A.)

*Affiliations with American Can Co.*—Mr. Hine, president, Mr. Moore, a director, and Daniel G. Reid, a stockholder of the bank, are directors of this company, the last named being chairman of the board. Its capital stock and funded debt is \$82,000,000. (Ex. 134-A.)

*Affiliations with National Biscuit Co.*—Mr. Hine and Mr. Moore are directors. The capital stock and funded debt of the company is, \$54,000,000, and its annual gross earnings around \$45,000,000. (Ex. 134-A.)

*Affiliations with United States Rubber Co.*—Mr. Hine is a director. Its capital stock and funded debt is \$117,000,000 and its annual gross earnings are around \$55,000,000. (Ex. 134-A.)

*Affiliations with other producing and trading corporations.*—Of the bank's directorate, Mr. Hepburn is a director of the American Agricultural Chemical Co. and Mr. Norton is a director of the Baldwin Locomotive Works. (Ex. 134-A.)

*Affiliations with American Telephone & Telegraph Co.*—Mr. Baker and Mr. Mitchell of the bank's directorate are directors of this company. (Ex. 134-A.)

*Affiliations with Western Union Telegraph Co.*—Mr. Mitchell and Mr. Fabenstock of the bank's directorate are directors of this company. (Ex. 134-A.)

*Affiliations with Consolidated Gas Co. of New York.*—Mr. Baker is a director. (Ex. 134-A.)

#### SECTION 7.—NATIONAL CITY BANK OF NEW YORK.

*Organization, capital, and management.*—The directors are James Stillman, J. Ogden Armour, Francis M. Bacon, Cleveland H. Dodge, Henry C. Frick, Joseph P. Grace, Cyrus H. McCormick, Edwin S. Marston, Gerrish H. Milliken, J. P. Morgan, jr., Stephen S. Palmer, James H. Post, M. Taylor Pyne, William Rockefeller, James A. Stillman, Jacob H. Schiff, Samuel Sloan, William Douglas Sloane, John

W. Sterling, Henry A. C. Taylor, Moses Taylor, P. A. Valentine, Eric P. Swenson, Frank A. Vanderlip, Frank Trumbull, and R. S. Lovett.

Mr. James Stillman is chairman of the board of directors. Mr. Vanderlip is president and Samuel McRoberts, William A. Simonson, Joseph T. Talbert, James A. Stillman, and John E. Gardin are vice presidents. (Ex. 232, R., 2104.)

Among the principal stockholders are James Stillman, with 47,498 shares out of a total of 250,000; his son, James A. Stillman, with 2,500; J. P. Morgan & Co., with 15,000; Kidder, Peabody & Co., with 1,000; William Rockefeller, with 10,000; John D. Rockefeller, with 1,750; M. Taylor Pyne and Percy R. Pyne, each with 8,267; Robert Bacon, a former partner in Morgan & Co., 1,000; Jacob H. Schiff, with 500; William Woodward, president of the Hanover National Bank, with 1,710; and J. W. Sterling, with 6,087. (Ex. 201½, R., 1888; Ex. 232, R., 2105; Davison, R., 1879.)

Its capital stock is \$25,000,000, having been increased from \$1,000,000 to \$10,000,000 in 1900 and to \$25,000,000 in 1902. Its surplus and undivided profits are \$28,181,981. (Ex. 232, R., 2104.)

*James Stillman its ruling spirit.*—Mr. Stillman, as owner of almost one-fifth of its capital stock and successively president and chairman of the board of directors, for many years has dominated the policy and management of the bank.

*General character of business.*—It does the ordinary business of a national bank; acts as an "issuing house" for corporate securities; and is the largest lender of money on the New York Stock Exchange. (Griesel, R., 746.)

On or about January 1, 1912, it had loans outstanding on stock-exchange collateral of approximately \$96,000,000; July 1, 1912, \$101,000,000; November 1, 1912, \$84,000,000. (Ex. 133, R., 1208.) It has in round figures \$33,000,000 in bonds; nothing in stocks. (Ex. 232, R., 2105.)

*Resources, deposits, and profits.*—It has resources of \$274,000,000 and deposits of \$214,000,000. (Ex. 134-A; Ex. 232, R., 2121.)

From 1903 to 1907, inclusive, it paid dividends on its increased capital of \$25,000,000 at the rate of 8 per cent; and since 1907 at the rate of 12 per cent; and has accumulated a surplus and profits of \$28,181,981, of which, however, \$7,500,000 was paid in by stockholders. (Ex. 232, R., 2104.)

*Affiliations with National City Co.*—This is a stock-holding adjunct of the National City Bank, organized on the same plan as the First Security Co. Its capital stock is \$10,000,000, to pay which a special dividend of 40 per cent was declared by the bank. (Ex. 232, R., 2108-2110.) Its total resources and profits are unknown.

*Affiliations with Farmers' Loan & Trust Co.*—Nine directors of the National City Bank, including the president, Mr. Vanderlip, and Mr. James A. Stillman, are directors of the Farmers' Loan & Trust Co., which has resources of \$135,000,000 and deposits of \$125,000,000. (Ex. 134-A, Interlocking Directorates.)

*Affiliations with New York Trust Co.*—Mr. Stillman and two other directors of the National City Bank are directors of the New York Trust Co., which has resources of \$63,000,000 and deposits of \$37,000,000. (Ex. 134-A.)

*Affiliations with United States Trust Co.*—James Stillman, William Rockefeller, and William D. Sloane, of the bank's directorate, are directors of the United States Trust Co., which has resources of \$77,000,000 and deposits of \$60,000,000. (Ex. 134-A.)

*Affiliations with Riggs National Bank and American Security & Trust Co., of Washington, D. C.*—Mr. Vanderlip is a director in these two institutions, which have resources of \$15,000,000 and \$14,000,000, respectively, and deposits of \$9,000,000 each. (Ex. 134-A.)

*Affiliations with National Bank of Commerce.*—Mr. Vanderlip, president, and Mr. Simonson, a vice president, of the National City Bank, are directors of the National Bank of Commerce. (Ex. 134-A.)

*Summary of affiliations with financial corporations.*—It is thus seen that the National City Bank, together with its adjunct, the National City Co., has resources of \$285,000,000, taking no account of the unknown assets of the latter; that three other institutions in the city of New York in which it has an influential voice have resources of \$275,000,000; and that a bank and a trust company outside New York in which its president is a director have resources of \$29,000,000; making total banking resources of about \$600,000,000 within its sphere of influence.

*Affiliations with Chesapeake & Ohio Railway Co.*—Mr. Vanderlip, president of the bank, is a director of this railway, and Mr. Trumbull, president of the railway company is a director of the bank. Since 1910 the bank, in conjunction with others, has marketed for it 10 security issues aggregating \$63,000,000. Its capital stock and funded debt is \$285,000,000, and it controls 2,000 miles of road. (Ex. 232, R., 2104, 2111; Ex. 134-A.)

*Affiliations with Chicago, Milwaukee & St. Paul Railway Co.*—J. Ogden Armour and William Rockefeller, directors, and Samuel McRoberts, vice president, of the National City Bank, are directors of this railway, and since 1909 the bank, in conjunction with others, has marketed for it three issues of securities aggregating \$87,000,000, and one issue of \$25,000,000 for a subsidiary, the Chicago, Milwaukee & Puget Sound Railway Co. Its capital stock and funded debt is \$486,000,000, and it has 10,000 miles of road. (Ex. 232, R., 2104, 2111; Ex. 134-A.)

*Affiliations with Chicago & North Western Railway.*—James Stillman, H. C. Frick, and C. H. McCormick, of the bank's directorate, are directors of this railway, which has capital stock and funded debt of \$334,000,000 and controls 8,000 miles of road. (Ex. 134-A.)

*Affiliations with Delaware, Lackawanna & Western Railroad Co.*—James Stillman, William Rockefeller, M. Taylor Pyne, H. A. C. Taylor, and S. S. Palmer, of the bank's directorate, are directors of this railroad. (Ex. 134-A.)

*Affiliations with Southern Pacific Co.*—Messrs. Vanderlip and William Rockefeller were directors of this company until the Supreme Court recently decreed its separation from the Union Pacific and Mr. Lovett, until then its chief executive officer, is a director of the bank. In 1909, the bank, in conjunction with others, marketed for it two security issues, aggregating \$10,000,000, and one of \$44,500,000 for its subsidiary, the Southern Pacific Railroad Co. The company has a capital stock and funded debt of \$894,000,000 and controls 10,000 miles of railroad. (Ex. 232, R., 2104, 2111; Ex. 134-A.)

*Affiliations with the greater transportation, producing and trading and public utility corporations.*—The firm has a representative in the directorates of the Louisville & Nashville Railroad, American Agricultural Chemical Co., American Writing Paper Co., General Electric Co., United Fruit Co., United States Smelting, Refining & Mining Co., United States Steel Corporation, American Telephone & Telegraph Co., Interborough Rapid Transit Co., of New York, and Massachusetts electric companies. (Ex. 134-A.)

And in conjunction with other bankers it has purchased or underwritten the security issues of these and also of other of the greater corporations, as follows: American Smelters Security Co., American Woolen Co., Armour & Co., Atchison, Topeka & Santa Fe Railway, Baldwin Locomotive Works, Baltimore & Ohio Railroad, Chesapeake & Ohio Railway, Chicago, Burlington & Quincy Railroad, Chicago Great Western Railway, Chicago, Indiana & Southern Railway, Chicago, Milwaukee & Puget Sound Railway, Chicago & Northwestern Railway, Cudahy Packing Co., Erie Railroad Co., General Electric Co., Great Northern Railway, Hocking Valley Railway, International Harvester Co., Jones & Laughlin Steel Co., Kansas City Terminal Railway, Missouri Pacific Railway, New York Central Lines, New York, New Haven & Hartford Railroad and subsidiaries, including the Boston & Maine and the Maine Central, Norfolk & Western Railway, Oregon-Washington Railroad & Navigation Co., Pennsylvania Railroad, St. Louis & San Francisco Railroad, Southern Pacific Co., Southern Railway Co., Terminal Railway Association of St. Louis, United States Steel Corporation's subsidiaries, Virginian Railway, Wabash Railroad, and Western Electric Co. (Ex. 216, R., 1925.)

#### SECTION 9.—KIDDER, PEABODY & CO.

*Organization.*—This is a firm of Boston and New York, which had its beginning in 1845, and now consists of Robert Winsor, William G. Webster, Frank E. Peabody, William Endicott, jr., and Frank W. Remick, of Boston, and Charles S. Sargent, jr., and William L. Benedict, of New York. (Winsor, R., 1995.)

*General character of business.*—It does an international banking business, especially in the purchasing, underwriting, and marketing of security issues of corporations. Baring Bros. & Co. are its London correspondents. (Winsor, R., 1995.)

*Security issues purchased or underwritten.*—Since 1907 the firm has purchased or underwritten, principally in conjunction with other bankers, upward of 100 issues of the greater interstate corporations aggregating in excess of \$1,100,000,000. (Ex. 229, R., 2072-2085.)

*Affiliations with National Shawmut Bank of Boston.*—Of its capital stock of \$10,000,000 the firm owns \$579,200, par value, and Mr. Winsor and Mr. Webster are directors. (Winsor, R., 1995, 1996; Ex. 228, R., 2054.)

*Affiliations with Old Colony Trust Co., of Boston.*—The firm owns \$358,700, par value, of its capital stock, and Mr. Endicott is a director. The resources, deposits, and surplus of this company and of the National Shawmut Bank are as stated just above. (Winsor, R., 1995, 1996; Ex. 228, R., 2054.)

*Affiliations with other banks and trust companies.*—The firm is a small stockholder in the National Bank of Commerce, of Boston, of

which Mr. Endicott is vice president and a director; it owns \$261,200, par value, of the capital stock of the Worcester Trust Co. and has two representatives in the directorate; it is a small stockholder of the Union Trust Co., of Springfield, and has two representatives in the directorate; and Mr. Endicott is a director of the New England and Bay State Trust Cos. of Boston. (Winsor, R., 1995-1998; Ex. 228, R., 2054, 2086.)

It should be observed that Kidder, Peabody & Co. and Lee, Higginson & Co., if not the dominant factors, are the most potent single force in the control of the three institutions which hold at least more than half of the banking resources of Boston—the National Shawmut Bank, the First National Bank, and the Old Colony Trust Co. Together they own \$679,200, par value, of the capital stock of the first named and \$619,300 of that of the last, and have three and two representatives, respectively, in their directorates; while Lee, Higginson & Co. alone own \$273,800 of the capital stock of the second and has two representatives in its directorate.

*Affiliations with the greater transportation, producing and trading, and public utility corporations.*—The firm has one representative in the directorate of the Boston & Albany Railroad, two in that of the Fore River Shipbuilding Co., three in that of the Hartford Carpet Corporation, one in that of the United States Steel Corporation, one in that of the Boston Consolidated Gas Co., two in that of the Boston Elevated Railway, and one each in the directorates of the American Telephone & Telegraph Co. and the Western Union Telegraph Co. (Ex. 134-A.)

And it has joined with other bankers in purchasing or underwriting the security issues of most of these and also of other of the greater corporations, as follows: Amalgamated Copper Co.; American Cotton Oil Co.; American Smelters Security Co.; American Woolen Co.; Armour & Co.; Atchison, Topeka & Santa Fe Railway; Baldwin Locomotive Works; Central Pacific Co.; Chesapeake & Ohio Railway; Chicago, Burlington & Quincy Railroad; Chicago Great Western Railway; Chicago, Milwaukee & St. Paul Railway, and its subsidiary, Chicago, Milwaukee & Puget Sound Railway; Chicago & Northwestern Railway; Chicago, Rock Island & Pacific Railway; Cincinnati, Hamilton & Dayton Railroad; Delaware & Hudson Co.; Erie Railroad; Keystone Coal & Coke Co.; Missouri Pacific Railway; New York Central lines; New York, New Haven & Hartford Railroad and subsidiaries, including the Boston & Maine and the Maine Central; Oregon-Washington Railroad & Navigation Co.; Pennsylvania Railroad; Reading Co.; St. Louis & San Francisco Railroad; Southern Pacific Co.; Southern Railway; United Dry Goods Co.; United Fruit Co.; United States Smelting, Refining & Mining Co.; United States Steel Corporation's subsidiaries; Western Electric Co.; and Westinghouse Electric & Manufacturing Co. (Ex. 229, R., 2073-2085.)

#### SECTION 10.—KUHN, LOEB & CO.

*Organization.*—This is a firm consisting of Jacob H. Schiff, senior partner; his son, Mortimer L. Schiff; Otto H. Kahn, Paul M. Warburg, Felix M. Warburg, and Jerome H. Hanauer. (Schiff, R., 1661.)

*General character of business.*—It does an international banking business, including especially the issuance of securities. It does not seek general deposits and is not engaged in the general business of accepting deposits against draft, though it receives special deposits at times, and the purchase price of securities issued by it is occasionally left with it temporarily. (Schiff, R., 1661; Ex. 200, R., 1695.)

*Resources, deposits, and profits.*—Its resources and profits have not been disclosed. In the last six years it has held for interstate corporations deposits averaging \$17,347,500. (Ex. 200, R., 1695.)

*Security issues marketed.*—From 1907 to 1912, inclusive, the firm purchased alone security issues of corporations amounting to \$530,862,000, and in conjunction with other bankers issues amounting to \$704,777,708. From 1897 to 1906, inclusive, it purchased with other bankers issues amounting to \$821,289,000. (Ex. 200, R., 1756-1763.)

*Affiliations with Fourth National Bank of New York.*—Of its capital stock of \$5,000,000, the firm owns \$325,400, par value, all acquired since 1905; and Mortimer L. Schiff is a director. Its resources are \$51,000,000; deposits, \$29,000,000.

*Affiliations with Equitable Trust Co., of New York.*—Of its capital stock of \$3,000,000, the firm owns \$466,000, par value, mostly acquired since 1905; and Mr. Kahn is a director. Its resources are \$102,000,000; deposits, \$84,000,000. (Ex. 200, R., 1696-1765.)

*Affiliations with National Bank of Commerce of New York.*—Of its capital stock of \$25,000,000, the firm owns \$470,000, par value, \$300,000 of which was acquired since 1905; and Paul M. Warburg is a director and member of the finance committee. (Ex. 200, R., 1696, 1765.)

*Affiliations with United States Mortgage & Trust Co., of New York.*—The firm owns \$394,000, par value, of its stock; and P. L. Warburg and M. L. Schiff are directors. (Ex. 200, R., 1696, 1765.)

*Affiliations with other financial corporations.*—The firm is a substantial stockholder in the National Park Bank, the Bank of the Manhattan Co., the Merchants National Bank, the Union Exchange National Bank, all of New York, and the First National Bank of Chicago; and is a small stockholder in the Title Guarantee & Trust Co., of New York, of which also Paul M. Warburg is a director. The firm is a small stockholder in various other banks and trust companies. (Ex. 200, R., 1696-1765.)

*Affiliations with Baltimore & Ohio Railroad.*—With Speyer & Co., the firm managed the reorganization of this railroad and its subsidiary, the Baltimore & Ohio Southwestern, and from 1897 to 1911 marketed for it 21 security issues aggregating \$345,000,000. In 1912 the firm alone marketed for it an issue of \$5,000,000. Paul M. Warburg is a director. Its capital stock and funded debt is \$547,000,000 and it controls 4,000 miles of railroad. (Ex. 200, R., 1712, 1758-1763; Ex. 134-A.)

*Affiliations with Union Pacific Railroad.*—The firm served as bankers in conducting the reorganization of this railroad, and has remained such, purchasing alone from it between 1907 and 1911 four security issues, aggregating \$103,000,000, and, in conjunction with other bankers, one issue of \$7,500,000 and another of \$40,000,000 from a subsidiary, the Oregon-Washington Railroad & Navigation Co., and in 1897 one of \$5,390,000 from another subsidiary, the Oregon Railway & Navigation Co. Otto H. Kahn and Mortimer L. Schiff are directors.

Jacob H. Schiff is a director in one of its principal subsidiaries, the Oregon-Washington Railroad & Navigation Co. It has a capital stock and funded debt of \$660,000,000 and controls 7,000 miles of road. (Ex. 200, R., 1699, 1758-1763, 1765; Ex. 134-A.)

*Affiliations with Southern Pacific Co.*—The firm has also been banker for this system, and between 1907 and 1911 purchased alone from it and its subsidiaries, the Southern Pacific Railroad and the Central Pacific Railway, 8 security issues, aggregating \$124,000,000, and between 1903 and 1911, with associates, purchased 19 further issues, aggregating \$210,000,000. Mr. Kahn and Mortimer L. Schiff were directors until the very recent decree of the Supreme Court ordering the company to be separated from the Union Pacific. It has a capital stock and funded debt of \$894,000,000 and controls 10,000 miles of road. (Ex. 200, R., 1758-1763, 1765; Ex. 134-A.)

*Affiliations with the Chicago & North Western Railway.*—From 1909 to 1912 the firm purchased alone from this company six security issues, aggregating \$53,750,000, and one issue of \$5,000,000 from its subsidiary, the Chicago, St. Paul, Minneapolis & Omaha Railway. (Ex. 200, R., 1758-1763.)

*Affiliations with Chicago & Alton Railroad.*—From 1907 to 1912 the firm purchased alone from this company two security issues aggregating \$14,000,000, and in conjunction with others one issue of \$4,500,000. (Ex. 200, R., 1758-1763.)

*Affiliations with Chicago & Eastern Illinois Railroad.*—In 1912 the firm purchased alone seven security issues of this company aggregating \$11,000,000. (Ex. 200, R., 1758.)

*Affiliations with Illinois Central Railroad.*—From 1908 to 1912 the firm purchased alone from this company four security issues aggregating \$47,740,000, and from 1897 to 1904, in conjunction with other bankers, three issues, aggregating \$45,000,000. (Ex. 200, R., 1758-1763.)

*Affiliations with Pennsylvania Railroad.*—From 1907 to 1912 the firm purchased alone from this company four security issues aggregating \$75,000,000, and, in conjunction with other bankers one issue of \$40,000,000 and three issues of a subsidiary, the Pittsburgh, Cincinnati, Chicago & St. Louis Railway, aggregating \$13,000,000. In 1905, associated with J. P. Morgan & Co., it purchased an issue of \$100,000,000, and from 1899 to 1905, in association with Speyer & Co., nine issues, aggregating \$128,000,000. (Ex. 200, R., 1758-1763.)

*Affiliations with Wabash Railroad.*—In 1912 the firm purchased alone three issues of this company aggregating \$14,000,000; in 1910 one issue of \$5,000,000 in conjunction with other bankers; and in 1908, also in conjunction with other bankers, two issues of a subsidiary, the Wheeling & Lake Erie Railroad, aggregating \$12,000,000. (Ex. 200, R., 1758-1763.)

*Affiliations with other railroad systems.*—The firm has purchased from other railroad systems security issues as follows:

Atchison, Topeka & Santa Fe Railway, from 1897 to 1899, three issues aggregating \$15,000,000, in conjunction with other bankers.

Chesapeake & Ohio Railway, since 1907, 16 issues aggregating \$85,000,000, in conjunction with other bankers.

Chicago, Milwaukee & St. Paul Railway, since 1909, in conjunction with other bankers, three issues, aggregating \$88,000,000, and one

issue of \$25,000,000 of a subsidiary, the Chicago, Milwaukee & Puget Sound Railway, in conjunction with other bankers.

Delaware & Hudson Co., since 1907, six issues aggregating \$45,000,000, in conjunction with other bankers, and one of \$2,000,000 alone.

Denver & Rio Grande Railroad, in 1898 and 1899, two issues aggregating \$6,500,000, in conjunction with other bankers.

Hocking Valley Railway, since 1910, two issues, aggregating \$5,584,000.

Missouri Pacific Railway, in 1909, one issue of \$29,806,000 alone, and in 1897 one issue of \$10,000,000 of a subsidiary, the St. Louis, Iron Mountain & Southern Railway, in conjunction with other bankers.

New York, New Haven & Hartford Railroad, in 1907, one issue (a foreign loan) of \$28,000,000 and one issue of \$1,948,000 of a subsidiary, the New York, Ontario & Western Railway, both alone.

St. Louis Southwestern Railway, in 1909, one issue of \$1,000,000 alone. (Ex. 200, R. 1758-1763.)

Paul M. Warburg, of the firm, is a director of the Wells-Fargo Express Co. (Ex. 200, R. 1765.)

*Affiliations with Westinghouse Electric & Manufacturing Co.*—Paul M. Warburg is a director, and in 1907 and 1910 the firm purchased alone from the company two note issues of \$6,000,000 and \$4,000,000. (Ex. 200, R. 1758-1763, 1765.)

*Affiliations with other producing and trading corporations.*—In conjunction with other bankers, the firm purchased, in 1909, an issue of \$30,000,000 of Armour & Co.; in 1910 an issue of \$10,000 of the Baldwin Locomotive Works; in 1910 an issue of \$9,000,000 of the Consolidation Coal Co.; in 1899 two stock issues of the American Beet Sugar Co., aggregating \$6,400,000. (Ex. 200, R., 1758-1763.)

*Affiliations with American Telephone & Telegraph Co.*—In conjunction with other bankers, the firm has purchased from this company since 1906 three issues aggregating \$150,000,000. (Ex. 200, R., 1758-1763.)

*Affiliations with Western Union Telegraph Co.*—Mr. Schiff, of the firm, is a director.

*Affiliations with Kansas City Railway & Light Co.*—In conjunction with other bankers the firm purchased from this company in 1903 and 1904 four issues aggregating \$16,500,000. (Ex. 200, R., 1763.)

#### SEC. 11.—INTERRELATIONS OF MEMBERS OF THE GROUP.

*Morgan & Co. and First National Bank.*—Mr. Morgan, head of the firm of Morgan & Co., of New York, and Drexel & Co., of Philadelphia, and Mr. Baker, head officer and dominant power in the First National Bank since shortly after its organization, have been close friends and business associates from almost the time they began business. Mr. Morgan, testifying as to their relations, said (p. 1034):

Q. You and Mr. Baker have been old and close friends and associates for many years, have you not?

A. For a great many years; yes.

Q. Almost since you began business?

A. Well, since 1873, at least.

Q. During that time your house has been of great aid to the First National Bank in building up their great prosperity and they have been of great aid to you?

A. I hope so.

Q. That is the fact, is it not?

A. That is the fact, I think.

Q. During that period you have made many purchases of securities jointly and many joint issues of securities, have you not?

A. Yes, sir.

Before becoming partners in Morgan & Co., Mr. Davison and Mr. Lamont, two of the most active members of the firm, were vice presidents of the First National Bank, and still remain directors.

Next to Mr. Baker, Morgan & Co. is the largest stockholder of the First National, owning 14,500 shares, making the combined holdings of Mr. Baker and his son and Morgan & Co. about 40,000 shares out of 100,000 outstanding—a joint investment, based on the market value, of \$41,000,000 in this one institution.

Three of the Morgan partners—Mr. Morgan himself, Mr. Davison, and Mr. Lamont—are directors of the First National, and Mr. Morgan is a member of the executive committee of four, which has not, however, been active and has rarely met.

The First National has been associated with Morgan & Co. in the control of the Bankers Trust Co. As before stated, when the company was organized, its entire capital stock was vested in George W. Perkins, H. P. Davison, and Daniel G. Reid as voting trustees. Mr. Perkins was then a Morgan partner and Mr. Davison and Mr. Reid were, respectively, vice president and a large stockholder of the First National. Mr. Davison, who has since become a Morgan partner, and Mr. Reid have continued as such trustees. Mr. Perkins has been succeeded by the attorney of the company, who is also Mr. Davison's personal counsel. Mr. Davison and Mr. Lamont, of the Morgan firm, and Mr. Hine, president, Mr. Norton, vice president, and Mr. Hepburn, member of the executive committee of the First National, are codirectors of the Bankers Trust Co., Mr. Hine being also a member of its executive committee.

The First National likewise has been associated with Morgan & Co. in the control of the Guaranty Trust Co., Mr. Baker of the former being joined with Mr. Davison and Mr. Porter of the latter as voting trustees.

In the Astor Trust Co., controlled by Morgan & Co. through the Bankers Trust Co., Mr. Baker and Mr. Hine, chief officers of the First National, are directors.

In the Liberty National Bank, controlled by Morgan & Co. through the Bankers Trust Co., Mr. Hine is also a director.

Since its organization in 1894 Mr. Morgan and Mr. Baker have been associated as voting trustees in the control of the Southern Railway, of which, also, Morgan & Co. and the First Security Co. are stockholders, and Mr. Steele of the former and George F. Baker, jr., and H. C. Fahenstock of the First National are directors.

Mr. Morgan and Mr. Baker are also associated as voting trustees in the control of the Chicago Great Western Railway.

Mr. Morgan and Mr. Baker are further associated as directors and members of the executive committee of the New York Central Lines and as directors of the New York, New Haven & Hartford Railroad and the Pullman Co.

At Mr. Morgan's request Mr. Baker became and has remained a director and member of the finance committee of the United States Steel Corporation, which, as previously shown, was organized and always has been dominated by the former. At the request of Mr. Perkins, who, as a partner in Morgan & Co., was active in organizing the International Harvester Co., Mr. Baker became a director of that company, resigning only recently.

Mr. Stotesbury, of Morgan & Co., and Mr. Baker are associated as voting trustees in the control of the William Cramp Ship & Engine Building Co.

In 1901 Mr. Baker and associates, cooperating with Mr. Morgan, transferred to Reading Co. a majority of the stock of the Central Railroad of New Jersey, thereby bringing under one control railroad systems transporting  $33\frac{1}{2}$  per cent of the anthracite coal moving from the mines and coal companies owning or controlling 63 per cent of the entire anthracite deposits. (Baker, R., 1504, 1506, 1508.)

In the same year Mr. Baker cooperated with Mr. Morgan in transferring to the Northern Securities Co. controlling stock interests in the Northern Pacific and Great Northern Railways, competitive transcontinental systems.

One or more members of Morgan & Co. and one or more officers or directors of the First National are associated as codirectors in the following additional corporations, among others:

The Mutual Life Insurance Co. of New York;

The anthracite railroads, including the Reading, the Central of New Jersey, the Lehigh Valley, the Erie, the New York, Susquehanna & Western, and the New York, Ontario & Western;

The Northern Pacific Railway, in which also Mr. Steele, of Morgan & Co., and Mr. Baker, of the First National, are members of the executive committee;

Adams Express Co.;

American Telegraph & Telephone Co.; and

The Baldwin Locomotive Works.

But nothing demonstrates quite so clearly the close and continuing cooperation between Morgan & Co. and the First National Bank as their joint purchases and underwritings of corporate securities. Since 1903 they have purchased for their joint account, generally with other associates, 70 odd security issues of 30 different corporations, aggregating approximately \$1,080,000,000. (Ex. 213, R., 1895; Ex. 235, R., 2127.) A complete statement of such joint transactions in securities will be found in a subsequent part of this report.

It is thus seen that through stockholdings, interlocking directors, partnership transactions, and other relations, Morgan & Co. and the First National Bank are locked together in a complete and enduring community of interest. Their relations in this regard are, indeed, a commonplace in the financial world. Thus, Mr. Schiff being asked whether he knew "the close relations between Messrs. Morgan and the First National Bank," replied "I do." (R., 1687.)

*Morgan & Co., First National Bank, and National City Bank.*—Mr. Stillman, as president, chairman of the board of directors and largest stockholder, for a long time has held a position of dominance in the National City Bank corresponding to Mr. Morgan's in his firm and Mr. Baker's in the First National Bank.

For many years while Morgan & Co. and the First National Bank were in close business union the National City Bank apparently occupied a position of independence. More recently, however, it has been drawn into the community of interest long existing between the two first named, as is evidenced by a series of important transactions.

First. Within three or four years Morgan & Co. acquired \$1,500,000 par value of the capital stock of the National City Bank, representing an investment at the stock's present market price of \$6,000,000, and J. P. Morgan, jr., became a director. (Morgan, R., 1036, 1075, 1076; Davison, R., 1879; Ex. 134-A.)

Second. In 1910 Mr. Morgan, in conjunction with both Mr. Baker, his long-time associate, and Mr. Stillman, head of the National City Bank, purchased from Mr. Ryan and the Harriman estate \$51,000, par value, of the stock of the Equitable Life Assurance Society, paying therefor what Mr. Ryan originally paid with interest at 5 per cent—about \$3,000,000—the investment yielding less than one-eighth of 1 per cent. Mr. Stillman and Mr. Baker each agreed to take a one-fourth interest in the purchase if requested to do so by Mr. Morgan. No such request has yet been made by him.

No sufficient reason has been given for this transaction, nor does any suggest itself, unless it was the desire of these gentlemen to control the investment of the \$504,000,000 of assets of this company, or the disposition of the bank and trust company stocks which it held and was compelled by law to sell within a stated time. Mr. Morgan was interrogated as follows on this subject (R., 1068, 1069, 1071):

Q. You may explain, if you care to, Mr. Morgan, why you bought from Messrs. Ryan and Harriman \$51,000 par value of stock that paid only \$3,710 a year, for approximately \$3,000,000, that could yield you only one-eighth or one-ninth of 1 per cent.

A. Because I thought it was a desirable thing for the situation to do that.

Q. That is very general, Mr. Morgan, when you speak of the situation. Was not that stock safe enough in Mr. Ryan's hands?

A. I suppose it was. I thought it was greatly improved by being in the hands of myself and these two gentlemen, provided I asked them to do so.

Q. How would that improve the situation over the situation that existed when Mr. Ryan and Mr. Harriman held the stock?

A. Mr. Ryan did not have it alone.

Q. Yes; but do you not know that Mr. Ryan originally bought it alone and Mr. Harriman insisted on having him give him half?

A. I thought if he could pay for it that price I could. I thought that was a fair price.

Q. You thought it was good business, did you?

A. Yes.

Q. You thought it was good business to buy a stock that paid only one-ninth or one-tenth of 1 per cent a year?

A. I thought so.

Q. The normal rate of interest that you can earn on money is about 5 per cent, is it not?

A. Not always; no.

Q. I say, ordinarily.

A. I am not talking about it as a question of money.

Q. The normal rate of interest would be from 4 to 5 per cent, ordinarily, would it not?

A. Well?

Q. Where is the good business, then, in buying a security that only pays one-ninth of 1 per cent?

A. Because I thought it was better there than it was where it was. That is all.

Q. Was anything the matter with it in the hands of Mr. Ryan?

A. Nothing.

Q. In what respect would it be better where it is than with him?

A. That is the way it struck me.

Q. Is that all you have to say about it?

A. That is all I have to say about it.

Q. You care to make no other explanation about it?

A. No.

Q. I do not understand why you bought this company.

A. For the very reason that I thought it was the thing to do, as I said.

Q. But that does not explain anything.

A. That is the only reason I can give.

Q. It was the thing to do for whom?

A. That is the only reason I can give. That is the only reason I have, in other words. I am not trying to keep anything back, you understand.

Q. I understand. In other words, you have no reason at all?

A. That is the way you look at it. I think it is a very good reason.

Mr. Baker was asked the following questions (R., 1466, 1467, 1469, 1470, 1535):

Q. Coming, now, to this transaction of the Equitable Life. You remember when Mr. Morgan acquired the control from Messrs. Ryan and Harriman, do you not?

A. Yes, sir.

Q. When was it?

A. I could not tell you that date.

Q. It was in 1910, was it not?

A. If that is what you have in your record there, that is correct, I suppose.

Q. I think that is correct. Is that your recollection?

A. No; it is not my recollection; but it is on the record there.

Q. What is your recollection?

A. I know it was two or three years ago. That is all.

Q. At the time Mr. Morgan acquired the interest in the Equitable, did he consult with you?

A. Yes, sir.

Q. And with Mr. Stillman?

A. Yes.

Q. \* \* \* I want to ask you further concerning this Equitable Life transaction. Do I correctly understand that at the time Mr. Morgan made the purchase you and Mr. Stillman committed yourselves to take part of it?

A. That was done so informally—

Q. (interrupting). Did you?

A. Yes; I will say we did.

Q. You were consulted before it was done, and you agreed to take a part of it?

A. Yes.

Q. Then, following that, about a year later, you were asked to write this letter, were you not, confirming that arrangement?

A. Yes. Mr. J. P. Morgan, jr., wrote me a letter and I put my initials at the bottom, saying it was so, or something of that kind.

Q. Referring back, now, to the talk you say you had with Mr. Morgan and Mr. Stillman about the purchase of the Equitable stock; before it was purchased, what reason did Mr. Morgan give for wanting to take that stock from Mr. Ryan?

A. I can not remember that he gave any special reason, except that he thought it would be a good thing to be in his hands.

Q. When he said he thought it would be a good thing to be in his hands, rather than in the hands of Mr. Ryan, what did you understand that to mean?

A. I did not understand that to mean much of anything. I did not take much interest in it.

Third, about a year later Mr. Stillman and Mr. Baker, pursuant to an understanding between them and J. P. Morgan & Co., purchased approximately one-half of the holdings of the Mutual and Equitable Life insurance companies in the stock of the National Bank

of Commerce, amounting altogether to some 42,200 shares. Mr. Baker being a member of the finance committee of the Mutual, it was arranged that he should purchase the Equitable's stock—about 15,250 shares—and Mr. Stillman the Mutual's. Pursuant to the understanding, Mr. Stillman turned over 10,000 shares to Morgan & Co., who already owned 7,000 shares. Mr. Baker kept 5,000 shares, turned over 5,000 to the First Security Co., and distributed the rest among various persons; 3,000 shares were allotted by Mr. Stillman and Mr. Baker to Kuhn, Loeb & Co.

Mr. Baker testified as follows regarding this transaction (R., 1463, 1464):

Q. Was the purchase of that stock the result of an understanding between you and him and others?

A. Yes, sir.

Q. Who were the others?

A. Some of the people at Mr. Morgan's.

Q. Who?

A. I can not remember whether it was Mr. Morgan himself, or Jack—I mean Mr. J. P. Morgan, jr.—or some others; I do not remember.

Q. Then the purchase altogether amounted to about 42,200 shares, did it not, from the two companies?

A. Yes.

Q. What arrangement was there as to the distribution of that stock; how it should be distributed between Messrs. Morgan and Stillman and yourself?

A. I can not remember that there was any in particular. I disposed of mine as I have told you, and that is as near as I can remember. I can account for the bulk of it.

Q. Was there or was there not talk about the distribution of that 42,200 shares?

A. There may have been, but I do not remember.

Q. You do not remember whether there was or not?

A. No, sir.

Q. And you can not tell what Messrs. Morgan & Co. agreed to take before the stock was bought?

A. I do not know whether they agreed to take any. I think Mr. Morgan took 10,000 shares, probably, from Mr. Stillman.

Q. Before you bought the stock between you, these three interests, was there not some understanding, and if so, what was it, as to the way it should be divided up?

A. Possibly there was, but I do not remember clearly enough to answer the question intelligently to you. I am willing to admit, if it is of any interest to the committee, that there was an understanding and that we were to take it for joint account.

Q. The committee would rather not have any admissions that do not agree with your recollection, if you have no recollection of it at all.

A. I have not a definite enough recollection to state under oath.

Q. Is it your impression that there was an understanding that it was purchased for joint account?

A. Yes.

Q. Between those three interests?

A. Yes; that it would be divided. I do not think they were for joint account.

The National City Bank, the First National, and Morgan & Co. now have two representatives each on the board of directors of the National Bank of Commerce—Mr. Vanderlip, president, and Mr. Simonson, vice president, of the first named; Mr. Baker, chairman of the board, and Mr. Hine, president of the second; and H. P. Davison and J. P. Morgan, jr., of the last; whilst six of its finance committee of nine (it has no executive committee) consist of Mr. Vanderlip and Mr. Simonson of the National City Bank Mr. Hine of the First National, Mr. Wiggin, president of the Chase National, which, as appeared above, has for some years been controlled by the First National, and Mr. Davison and Mr. J. P. Morgan, jr., of J. P. Morgan & Co.

Fourth, during the same period in which occurred the three transactions just described—that is, within the last four years—the National City Bank, the First National, and Morgan & Co. (excluding issues in which there were other parties to the joint account) have purchased or underwritten in joint account 36 security issues (including the impending issue of the Interborough Rapid Transit Co.) amounting to \$484,456,000 and they, with other associates, 31 additional issues amounting to \$548,027,000, making in all 67 issues aggregating over \$1,000,000,000 in which the First National, the National City Bank, and Morgan & Co. were joint purchasers or underwriters. Further, in the same period, the National City Bank and Morgan & Co. and other associates, not including the First National, have purchased or underwritten in joint account 20 security issues aggregating \$333,385,000. On the other hand, in the 10 years prior to 1908 the National City Bank joined with Morgan & Co. in but one purchase or underwriting of securities and with the First National in not one.

The acquisition by Morgan & Co. of a large block of stock of the National City Bank, with representation upon its board of directors, and the transactions that followed, in which those two institutions and the First National Bank were joined, as above set forth, show a unison of interest and a continuity of cooperation between the three, such as for many years previously had existed between two of them—Morgan & Co. and the First National.

*Combined power of Morgan & Co., the First National, and National City Banks.*—In earlier pages of the report the power of these three great banks was separately set forth. It is now appropriate to consider their combined power as one group.

First, as regards banking resources:

The resources of Morgan & Co. are unknown; its deposits are \$163,000,000. The resources of the First National Bank are \$150,000,000 and those of its appendage, the First Security Co., at a very low estimate, \$35,000,000. The resources of the National City Bank are \$274,000,000; those of its appendage, the National City Co., are unknown, though the capital of the latter is alone \$10,000,000. Thus, leaving out of account the very considerable part which is unknown, the institutions composing this group have resources of upward of \$632,000,000, aside from the vast individual resources of Messrs. Morgan, Baker, and Stillman.

Further, as heretofore shown, the members of this group, through stock holdings, voting trusts, interlocking directorates, and other relations, have become in some cases the absolutely dominant factor, in others the most important single factor, in the control of the following banks and trust companies in the city of New York:

(a) Bankers Trust Co., resources.....	\$205,000,000
(b) Guaranty Trust Co., resources.....	232,000,000
(c) Astor Trust Co., resources.....	27,000,000
(d) National Bank of Commerce, resources.....	190,000,000
(e) Liberty National Bank, resources.....	29,000,000
(f) Chase National Bank, resources.....	150,000,000
(g) Farmers Loan & Trust Co., resources.....	135,000,000

in all, 7, with total resources of..... 968,000,000

which, added to the known resources of members of the group themselves, makes.....\$1,600,000,000  
as the aggregate of known banking resources in the city of New York under their control or influence.  
If there be added also the resources of the Equitable Life Assurance Society controlled through stock ownership of J. P. Morgan ..... 504,000,000  
the amount becomes ..... 2,104,000,000

Second, as regards the greater transportation systems.

(a) Adams Express Co.: Members of the group have two representatives in the directorate of this company.

(b) Anthracite coal carriers: With the exception of the Pennsylvania and the Delaware & Hudson, the Reading, the Central of New Jersey (a majority of whose stock is owned by the Reading), the Lehigh Valley, the Delaware, Lackawanna & Western, the Erie (controlling the New York, Susquehanna & Western), and the New York, Ontario & Western, afford the only transportation outlets from the anthracite coal fields. As before stated, they transport 80 per cent of the output moving from the mines and own or control 88 per cent of the entire deposits. The Reading, as now organized, is the creation of a member of this banking group—Morgan & Co. One or more members of the group are stockholders in that system and have two representatives in its directorate; are stockholders of the Central of New Jersey and have four representatives in its directorate; are stockholders of the Lehigh Valley and have four representatives in its directorate; are stockholders of the Delaware, Lackawanna & Western and have nine representatives in its directorate; are stockholders of the Erie and have four representatives in its directorate; have two representatives in the directorate of the New York, Ontario & Western; and have purchased or marketed practically all security issues made by these railroads in recent years.

(c) Atchison, Topeka & Santa Fe Railway: One or more members of the group are stockholders and have two representatives in the directorate of the company; and since 1907 have purchased or procured the marketing of its security issues to the amount of \$107,244,000.

(d) Chesapeake & Ohio Railway: Members of the group have two director in common with this company, and since 1907, in association with others, have purchased or procured the marketing of its security issues to the amount of \$85,000,000.

(e) Chicago Great Western Railway: Members of the group absolutely control this system through a voting trust.

(f) Chicago, Milwaukee & St. Paul Railway: Members of the group have three directors or officers in common with this company, and since 1909, in association with others, have purchased or procured the marketing of its security issues to the amount of \$112,000,000.

(g) Chicago & Northwestern Railway: Members of the group have three directors in common with this company, and since 1909, in association with others, have purchased or procured the marketing of its security issues to the amount of \$31,250,000.

(h) Chicago, Rock Island & Pacific Railway: Members of the group have four directors in common with this company.

(i) Great Northern Railway: One or more members of the group are stockholders of and have marketed the only issue of bonds made by this company.

(j) International Mercantile Marine Co.: A member of the group organized this company, is a stockholder, dominates it through a voting trust, and markets its securities.

(k) New York Central Lines: One or more members of the group are stockholders and have four representatives in the directorate of the company, and since 1907 have purchased from or marketed for it and its principal subsidiaries security issues to the extent of \$343,000,000, one member of the group being the company's sole fiscal agent.

(l) New York, New Haven & Hartford Railroad: One or more members of the group are stockholders and have three representatives in the directorate of the company, and since 1907 have purchased from or marketed for it and its principal subsidiaries security issues in excess of \$150,000,000, one member of the group being the company's sole fiscal agent.

(m) Northern Pacific Railway: One member of the group organized this company and is its fiscal agent, and one or more members are stockholders and have six representatives in its directorate and three in its executive committee.

(n) Southern Railway: Through a voting trust, members of the group have absolutely controlled this company since its reorganization in 1894.

(o) Southern Pacific Co.: Until its separation from the Union Pacific, lately ordered by the Supreme Court of the United States, members of the group had three directors in common with this company.

(p) Union Pacific Railroad: Members of the group have three directors in common with this company.

Third, as regards the greater producing and trading corporations.

(a) Amalgamated Copper Co.: One member of the group took part in the organization of the company, still has one leading director in common with it, and markets its securities.

(b) American Can Co.: Members of the group have two directors in common with this company.

(c) J. I. Case Threshing Machine Co.: The president of one member of the group is a voting trustee of this company and the group also has one representative in its directorate and markets its securities.

(d) William Cramp Ship & Engine Building Co.: Members of the group absolutely control this company through a voting trust.

(e) General Electric Co.: A member of the group was one of the organizers of the company, is a stockholder, and has always had two representatives in its directorate, and markets its securities.

(f) International Harvester Co.: A member of the group organized the company, named its directorate and the chairman of its finance committee, directed its management through a voting trust, is a stockholder, and markets its securities.

(g) Lackawanna Steel Co.: Members of the group have four directors in common with the company and, with associates, marketed its last issue of securities.

(h) Pullman Co.: The group has two representatives, Mr. Morgan, and Mr. Baker, in the directorate of this company.

(i) United States Steel Corporation: A member of the group organized this company, named its directorate, and the chairman of its

finance committee (which also has the powers of an executive committee) is its sole fiscal agent and a stockholder, and has always controlled its management.

Fourth, as regards the greater public utility corporations.

(a) American Telephone & Telegraph Co.: One or more members of the group are stockholders, have three representatives in its directorate, and since 1906, with other associates, have marketed for it and its subsidiaries security issues in excess of \$300,000,000.

(b) Chicago Elevated Railways: A member of the group has two officers or directors in common with the company, and in conjunction with others marketed for it in 1911 security issues amounting to \$66,000,000.

(c) Consolidated Gas Co. of New York: Members of the group control this company through majority representation on its directorate.

(d) Hudson & Manhattan Railroad: One or more members of the group marketed and have large interests in the securities of this company, though its debt is now being adjusted by Kuhn, Loeb & Co.

(e) Interborough Rapid Transit Co. of New York: A member of the group is the banker of this company, and the group has agreed to market its impending bond issue of \$170,000,000.

(f) Philadelphia Rapid Transit Co.: Members of the group have two representatives in the directorate of this company.

(g) Western Union Telegraph Co.: Members of the group have seven representatives in the directorate of this company.

*Summary of directorships held by these members of the group.*—Exhibit 134-B (annexed hereto as Appendix E) shows the combined directorships in the more important enterprises held by Morgan & Co., the First National Bank, the National City Bank and the Bankers and Guaranty Trust Cos., which latter two, as previously shown, are absolutely controlled by Morgan & Co. through voting trusts. It appears there that firm members or directors of these institutions together hold:

One hundred and eighteen directorships in 34 banks and trust companies having total resources of \$2,679,000,000 and total deposits of \$1,983,000,000.

Thirty directorships in 10 insurance companies having total assets of \$2,293,000,000.

One hundred and five directorships in 32 transportation systems having a total capitalization of \$11,784,000,000 and a total mileage (excluding express companies and steamship lines) of 150,200.

Sixty-three directorships in 24 producing and trading corporations having a total capitalization of \$3,339,000,000.

Twenty-five directorships in 12 public utility corporations having a total capitalization of \$2,150,000,000.

In all, 341 directorships in 112 corporations having aggregate resources or capitalization of \$22,245,000,000.

The members of the firm of J. P. Morgan & Co. hold 72 directorships in 47 of the greater corporations; George F. Baker, chairman of the board, F. L. Hine, president, and George F. Baker, jr., and C. D. Norton, vice presidents, of the First National Bank of New York, hold 46 directorships in 37 of the greater corporations; and

James Stillman, chairman of the board, Frank A. Vanderlip, president, and Samuel McRoberts, J. T. Talbert, W. A. Simonson, vice presidents, of the National City Bank of New York, hold 32 directorships in 26 of the greater corporations; making in all for these members of the group 150 directorships in 110 of the greater corporations.

The affiliations of these and other banking institutions with the larger railroad, industrial, and public utility corporations and banks, trust companies, and insurance companies of the United States, are shown in graphic form in two diagrams which are in evidence, and are attached to this report as Appendices F and G.

*Relations between Morgan & Co., First National Bank, National City Bank, Lee Higginson & Co., Kidder, Peabody & Co., and Kuhn, Loeb & Co.*—Besides the group composed of Morgan & Co. and the First National Bank and the National City Bank, the principal banking agencies through which the greater corporate enterprises of the United States obtain capital for their operations are the international banking firms of Kuhn, Loeb & Co., of New York, and Kidder, Peabody & Co. and Lee Higginson & Co., of Boston and New York.

While it does not appear that these three last-named houses are affiliated with the group consisting of the first three in so definite and permanent a form of alliance as that existing between the latter, it is established that as issuing houses they do not as a rule act independently in purchasing security issues but rather in unison and cooperation with one or more members of that group, with the result that in the vastly important service of arranging credits for the great commercial enterprises of the country there is no competition or rivalry between those dominating that field, but virtually a monopoly the terms of which the borrowing corporations must accept.

The full extent to which they participate in one another's issues does not appear, owing to the absence of data as to the names of underwriters, other than in strictly joint-account transactions of the issued of securities made by Messrs. Morgan & Co., Kuhn, Loeb & Co., the First National Bank, and the National City Bank. The distinction between the cases in which one of the banks or banking houses assumes the relation of an underwriter of an issue of securities made by one of the others and that in which they act in joint account is that in the former case underwriters do not share in the primary bankers' profit, but insure the former against loss, while in the case of a joint account they are partners and as such share in the original risks and profits.

The course of business is for the house acquiring from a corporation the right of purchasing or underwriting an issue of its securities to offer participations in the purchase or underwriting to one or more of the associates named. Taking as an illustration the latest issue of the American Telephone & Telegraph Co., the method of procedure is thus described in the testimony of Mr. Schiff (R., 1664):

Q. And is there not an issue now in course of offer to the public, of American Telephone & Telegraph bonds?

A. There is.

Q. Advertised in the last few days?

A. In course of offer to the stockholders; not to the public.

Q. They are in course of offer to the stockholders and if the stockholders do not take them, are they then to be offered to the public?

A. Then the underwriting syndicate will have to take them, and whether they will offer them to the public or not I do not know.

Q. But it is an issue that is publicly offered to the stockholders?—

A. It is going to be publicly offered to the stockholders.

Q. What is the amount of that issue?—

A. I believe it is between \$60,000,000 and \$70,000,000.

Q. It is \$67,000,000, is it not?—

A. It may be \$67,000,000; I do not recall.

Q. Is that a joint-account transaction between Morgan, Kidder, Peabody, and yourselves?—

A. It is a joint account transaction between Morgan's, First National Bank, the National City Bank, Kidder, Peabody & Co., and Baring Bros., and ourselves.

Q. Baring Bros., of London?—

A. Yes.

Q. Take that as an illustration; who made the deal with the company?

A. I believe J. P. Morgan & Co.

Q. And they invited you to participate on joint account with these other houses?—

A. They did.

The following table taken from the record shows the joint purchases and underwriting of securities principally since 1905, by the six banking institutions above named and also by the Illinois Trust & Savings Bank, the First National Bank, and the First Trust & Savings Bank of Chicago:

**EXPLANATORY NOTE.**—This table has been made up for the most part from data furnished by the undenoted banking institutions. Certain of said institutions did not report their transactions prior to 1908, so that the list of joint transactions prior to that year is incomplete. Moreover, J. P. Morgan & Co. reported only issues in which they were interested. The National City Bank, New York, reported only issues in which it was principal. The First National Bank, Chicago, reported only issues in which it was principal.

The information with regard to Kissel, Kinnicut & Co. was obtained from data furnished by the other institutions. In a few cases, where one or more banking institutions sold an issue of securities for account of a company, such institutions are shown by an asterisk (\*), and the actual purchasers of the securities by a parallel (||).

In general the original purchasers are shown by an asterisk (\*), as also are original members of a purchasing syndicate. Syndicate managers or organizers are additionally noted by a dagger (†). In the case of joint purchases the institution which is publicly reported as the principal in the transaction is similarly noted.

Organizers of a subsidiary syndicate in which others of the undenoted banking institutions are participants are shown by a double dagger (‡). All other syndicate participants or purchasers of securities through other institutions are shown by a parallel (||).

*Table showing joint purchases and underwritings of corporate securities by certain named banking houses.*

Description of security.	Amount issued.	Date of sale.	J. P. Morgan & Co.	First National Bank, New York.	National City Bank, New York.	Lee, Higginson & Co.	Kidder, Peabody & Co.	Kuhn, Loeb & Co.	Illinois Trust & Savings Bank, Chicago.	First National Bank, Chicago.	First Trust & Savings Bank, Chicago.	Kissel, Kinnicut & Co.
<b>A</b> malgamated Copper 10% notes.	\$12,500,000	Apr., 1911					(  )					
<b>A</b> merican Agricultural Chemical Co.: 1st ss, 1928.	8,000,000	Oct., 1908	(  )		(*)							
1st ss, 1928.	4,000,000	Jan., 1911	(  )		(*)					(  )		
6% cum. pfd.	6,000,000	Apr., 1912			(*)		(  )					
<b>A</b> merican Cotton Oil Co.: 1st ss, 1911.	6,000,000	Mar., 1911		(*)	(  )		(  )		(  )			
<b>A</b> merican Smelters sec. Co.: Pfd. B. Stock (French ss.).	15,350,000	June, 1912					(  )					
6% deb, 1928.	25,500,000	Apr., 1905					(  )					
<b>A</b> merican Telephone & Telegraph Co.: Conv. 4s, 1938.	100,000,000	Feb., 1906	(*)		(  )		(*)					
Conv. 4s, 1938.	50,000,000	Nov., 1908	(*)		(  )		(*)		(  )			
5% notes, 1910.	25,000,000	Jan., 1907	(*)			(  )	(*)					
Collat. 4s, 1929.	25,000,000	Mar., 1905				(  )	(*)					
Convertible 4s.	67,000,000	Jan., 1913	(*)	(  )	(  )		(  )					
<b>A</b> merican W. & C. Co. pfd.	5,000,000	July, 1905				(  )	(  )					
<b>A</b> merican W. & C. Co. 1st ss, 1908.	5,000,000	Jan., 1908				(  )	(  )					
<b>A</b> rmour & Co. 1st 4s, 1931.	30,000,000	Mar., 1909			(*)		(  )		(  )			
<b>A</b> ssociated Simmons Hardware Co. 5-year ss.	5,000,000	Oct., 1911					(  )					
<b>A</b> rchison, Topeka & Santa Fe Ry.: Gen. 4s, 1903.	4,000,000	Mar., 1908	(*)			(  )	(  )					
Conv. 4s, 1935.	32,420,000	Jan., 1905	(*)			(  )	(  )					
Conv. 4s, 1935.	28,258,000	June, 1909	(*)			(  )	(  )					
Conv. 4s, 1960.	47,686,000	Mar., 1910	(  )		(*)	(  )	(  )					



Table showing joint purchases and underwritings of corporate securities by certain-named banking houses—Continued.

Description of security.	Amount issued.	Date of sale.	J. P. Morgan & Co.	First National Bank, New York.	National City Bank, New York.	Lee Higginson & Co.	Kidder Peabody & Co.	Kuhn, Loeb & Co.	Illinois Trust & Savings Bank, Chicago.	First National Bank, Chicago.	First Trust & Savings Bank, Chicago.	Kissel, Kimbrell & Co.
Chicago Elevated Ry.: Stock synd. informal. 58, 1914.....	\$16,000,000	June, 1911			(*)				(1)			
Chicago Great Western: 1st 48, 1913.....	20,000,000	June, 1911			(*)				(1)			
Preferred.....	30,000,000	June, 1911			(*)				(1)			
Common.....	18,500,000	May, 1909	(*)		(1)	(1)	(1)		(1)	(1)		
Chicago, Indiana & Southern: 48, 1907.....	10,136,004	May, 1909	(*)		(1)	(1)	(1)		(1)	(1)		
Chicago, Milwaukee & Puget Sound: 1st 48, 1907.....	31,641,333	May, 1909	(*)		(1)	(1)	(1)		(1)	(1)		
Chicago, Milwaukee & St. Paul: Genl. 48, 1907.....	16,150,000	Mar., 1908	(1)	(*)	(*)	(1)						
Conv. 48, 1932.....	25,000,000	Mar., 1911			(*)	(1)			(1)	(1)		
Chicago & North Western Ry.: Genl. 348, 1987.....	25,000,000	Dec., 1909			(*)	(1)			(1)	(1)		
Genl. 48, 1987.....	28,000,000	June, 1909			(*)	(1)			(1)	(1)		
Genl. 48, 1987.....	34,850,500	Apr., 1912			(*)	(1)			(1)	(1)		
St. P. M. & O. deb. 58.....	10,000,000	Jan., 1909			(1)		(1)					
St. P. M. & O. N. W. 1st 348.....	7,500,000	Nov., 1910			(1)		(1)					
Mil. & State Line 348.....	15,000,000	Apr., 1911			(1)		(1)					
Chicago & North Western Ry.: 1st 58, 1927.....	5,000,000	Jan., 1912			(1)		(1)					
1st 58, 1927.....	3,750,000	Jan., 1909			(1)		(1)					
1st 58, 1927.....	2,500,000	Jan., 1909			(1)		(1)					
1st 58, 1927.....	5,000,000	Feb., 1908			(1)		(1)					
1st 58, 1927.....	3,000,000	May, 1908			(1)		(1)					
1st 58, 1927.....	16,887,000	Feb., 1909			(1)		(1)					
1st 58, 1927.....	15,000,000	Jan., 1911			(1)		(1)					
5-year 68.....	4,325,000	Feb., 1908			(1)		(1)					
Chicago, Rock Island & Pacific: Extended 58, 1909.....	6,000,000	Mar., 1908			(1)		(1)					
Deb. 58, 1932.....	20,000,000	Jan., 1912			(1)		(1)					
R. I. Ark. & La. 448, 1934.....	11,000,000	Feb., 1910			(1)		(1)					
St. P. & K. C. S. L. 448, 1941.....	10,000,000	Feb., 1911			(1)		(1)					
Chicago Telephone Co.: First 58, 1923.....	5,000,000	Oct., 1908	(1)		(1)	(1)						
First 58, 1923.....	14,000,000	Apr., 1912	(1)		(1)	(1)						
Chicago & Western Indiana: Consol. 48, 1952.....	1,700,000	Jan., 1911	(1)		(1)							
3-year 58.....	10,000,000	Aug., 1912	(1)		(1)							







Table showing joint purchases and underwritings of corporate securities by certain-named banking houses—Continued.

Description of security.	Amount issued.	Date of sale.	J. P. Morgan & Co.	First National Bank, New York.	National City Bank, New York.	Lee, Higginson & Co.	Kidder, Peabody & Co.	Kuhn, Loeb & Co.	Illinois Trust & Savings Bank, Chicago.	First National Bank, Chicago.	First Trust & Savings Bank, Chicago.	Kissel, Kiment & Co.
<b>New York Central &amp; Hudson Riv.:</b>												
4% notes, 1910	\$25,000,000	Jan., 1907	(C)	(C)	(C)	(C)	(C)		(C)			
4% notes, 1910	13,000,000	June, 1908	(C)	(C)	(C)	(C)	(C)		(C)			
Equip. 4s, 1910	7,500,000	Nov., 1910	(C)	(C)	(C)	(C)	(C)		(C)			
3-year 4s.	15,000,000	Dec., 1911	(C)	(C)	(C)	(C)	(C)		(C)			
3-year 4s.	15,000,000	Mar., 1911	(C)	(C)	(C)	(C)	(C)		(C)			
3-year 4s.	15,000,000	May, 1912	(C)	(C)	(C)	(C)	(C)		(C)			
3-year 4s.	5,000,000	May, 1912	(C)	(C)	(C)	(C)	(C)		(C)			
1-year 4s.	2,000,000	May, 1912	(C)	(C)	(C)	(C)	(C)		(C)			
1-year 4s.	2,000,000	June, 1912	(C)	(C)	(C)	(C)	(C)		(C)			
1-year 4s.	2,000,000	June, 1912	(C)	(C)	(C)	(C)	(C)		(C)			
1-year 4s.	1,000,000	Oct., 1912	(C)	(C)	(C)	(C)	(C)		(C)			
1-year 4s.	1,000,000	June, 1912	(C)	(C)	(C)	(C)	(C)		(C)			
<b>New York Chicago &amp; St. Louis:</b>												
4% notes, 1910	2,000,000	July, 1908	(C)	(C)	(C)	(C)	(C)		(C)			
4% notes, 1910	3,942,000	Jan., 1909	(C)	(C)	(C)	(C)	(C)		(C)			
<b>New York, New Haven &amp; Hartford:</b>												
European loan 4s.	15,000,000	Feb., 1905	(C)	(C)	(C)	(C)	(C)		(C)			
4% notes, 1912	28,000,000	Feb., 1907	(C)	(C)	(C)	(C)	(C)		(C)			
1-year 4s.	10,000,000	Jan., 1911	(C)	(C)	(C)	(C)	(C)		(C)			
1-year 4s.	30,000,000	Jan., 1912	(C)	(C)	(C)	(C)	(C)		(C)			
1-year 4s.	40,000,000	Nov., 1912	(C)	(C)	(C)	(C)	(C)		(C)			
1-year 4s.	3,942,000	May, 1908	(C)	(C)	(C)	(C)	(C)		(C)			
1-year 4s.	1,802,000	May, 1908	(C)	(C)	(C)	(C)	(C)		(C)			
1-year 4s.	3,200,000	May, 1908	(C)	(C)	(C)	(C)	(C)		(C)			
1-year 4s.	3,200,000	May, 1908	(C)	(C)	(C)	(C)	(C)		(C)			
1-year 4s.	11,927,000	May, 1911	(C)	(C)	(C)	(C)	(C)		(C)			
1-year 4s.	17,200,000	July, 1911	(C)	(C)	(C)	(C)	(C)		(C)			
1-year 4s.	2,000,000	Oct., 1912	(C)	(C)	(C)	(C)	(C)		(C)			
<b>New York, Ontario &amp; Western:</b>												
Gen. mfg. 4s.	2,000,000	Sept., 1905	(C)	(C)	(C)	(C)	(C)		(C)			
Gen. mfg. 4s.	2,702,000	Oct., 1911	(C)	(C)	(C)	(C)	(C)		(C)			
<b>New York Telephone Co.:</b>												
4% notes, 1910	25,000,000	Dec., 1909	(C)	(C)	(C)	(C)	(C)		(C)			
4% notes, 1910	10,000,000	July, 1910	(C)	(C)	(C)	(C)	(C)		(C)			
4% notes, 1910	10,000,000	May, 1912	(C)	(C)	(C)	(C)	(C)		(C)			
4% notes, 1910	5,000,000	Oct., 1912	(C)	(C)	(C)	(C)	(C)		(C)			
<b>New York &amp; Western:</b>												
Gen. mfg. 4s.	10,000,000	Jan., 1909	(C)	(C)	(C)	(C)	(C)		(C)			
1st 4s, 1901	40,000,000	May 1911	(C)	(C)	(C)	(C)	(C)		(C)			



*Table showing joint purchases and underwritings of corporate securities by certain-named banking houses—Continued.*

[illegible]

From this it appears that since 1905, under joint arrangements with Morgan & Co., the First National Bank, or the National City Bank, sometimes with one, sometimes with another, sometimes with all, Lee-Higginson & Co. have participated in the marketing of upward of 80 security issues aggregating about \$950,000,000; Kidder, Peabody & Co. in the marketing of upward of 60 issues, aggregating over \$1,000,000,000; and Kuhn, Loeb & Co. in the marketing of upward of 60 issues, aggregating over \$1,000,000,000.

It was admitted by Mr. Davison, of Morgan & Co., and other bankers that the practice of banking houses becoming in effect partners in the purchasing and underwriting of securities instead of acting independently of one another is a development of recent years. Mr. Davison testified as follows (R., 1854, 1855):

Q. Recently, within the last few years, many of the issues of J. P. Morgan & Co. have been made jointly with the First National Bank and the National City Bank, have they not?

A. Yes.

Q. And many with Lee-Higginson and with western bankers?

A. No; not very many with the western bankers. As a matter of fact, I recall very few with the western bankers. We have made them occasionally with Lee-Higginson and with other houses.

Q. You have made them very largely with Lee-Higginson?

A. It is comparative. I do not think we have, very largely.

Q. But your main joint-account transactions are with the City Bank and the First National Bank?

A. I think they have been.

Q. Is it not a fact that in previous years you made the issues largely alone, prior to five years ago?

A. I think more largely alone; yes, sir. They were smaller in character.

Q. Within what length of time has it been that J. P. Morgan & Co. have done most of their issuing business in joint account? Has it been within your time?

A. No; I think it was a little before my time.

Q. You think it started a little before your time?

A. I think it started a little before my time. In fact, the evidence shows that it did.

Mr. Schiff said (R., 1688):

Q. Don't you know that most of the Morgan issues in the past few years have been made jointly; that is, that the City Bank has participated in them with the First National?

A. I do.

Mr. Schiff is a director of the City Bank.

It will be noticed that Mr. Davison advances the great size of present-day security issues in explanation of why banking houses now purchase such issues in combination or for joint account instead of independently, as formerly. The fact is, however, as appears from the above-mentioned table, that not only are small issues still very frequent, but they are purchased in concert as regularly as the larger issues. Of the issues since 1907 shown on that table as having been purchased or underwritten by two or more of the banking houses there named acting together, about 90 were for \$5,000,000 and less, while an additional 60 were for amounts between \$5,000,000 and \$10,000,000. It also appears that 45 of such issues for \$5,000,000 and less, most of them made since 1909, were purchased or underwritten by Morgan & Co. in conjunction with associates.

Of course we do not suggest that banking houses may not on particular occasions join in purchasing or underwriting an issue of securities and yet remain entirely independent and free to compete with

each other generally in the purchase of security issues. But where a group of such banking houses, pursuant to a settled policy, regularly purchase these issues in concert competition amongst them in this vastly important commercial function is effectually suppressed. And that is the situation in this country. No less an authority than Mr. Baker admitted as much (R., 1542, 1543):

Q. But among these banking houses that we have named is there not a strong and continuous community of interest in the purchase and sale of securities?

A. I think there is. We have always tried to deal with our friends rather than with people we do not know.

Q. It is a good deal better to deal with your friends and split it up than it is to compete for the securities?

A. Not necessarily.

Q. That is what happens, is it not?

A. Oh, I do not think so to any great extent.

Q. Have you ever competed for any securities with Morgan & Co. in the last five years? If so, give us the name of them.

A. I do not know that we have competed with them.

Q. You divide with them, do you not? You give them a part of the issues when you have it?

A. We are very apt to.

Q. And if they take a security they give you a part of the issue, do they not?

A. Yes.

Q. That is what is known as the modern system of cooperation and combination as against the antique system of competition, is it not?

A. That is rather a long name for me.

Q. You understand the question. I would like to have you answer it.

A. I never heard it called in that way before.

Q. How would you call it?

A. I would not call it at all.

Q. You know what cooperation is, do you not?

A. Yes.

Q. Is that not cooperation as against competition? That is the modern system of cooperation as against the archaic system of competition, is it not?

A. I do not understand how you state that.

Q. That is right, is it not?

A. All right; yes.

Q. And that has been found to work very well, has it not?

A. I think so.

Q. For the bankers?

A. Yes; and for others, too.

Moreover, the banking houses which have joined in the plan of cooperation comprise the principal mediums through which the greater corporations of the country obtain their supplies of capital.

The charge for capital, which, of course, enters universally into the prices of commodities and of service, is thus in effect determined by agreement amongst those supplying it, and not under the check of competition. If there be any virtue in the principle of competition, certainly any plan or arrangement which prevents its operation in the performance of so fundamental a commercial function as the supplying of capital is peculiarly injurious.

The possibility of competition between these banking houses in the purchase of securities is further removed by the understanding amongst them and others that one will not seek by offering better terms to take away from another a customer which it has theretofore served, and by the corollary of this, namely, that where given bankers have once satisfactorily united in bringing out an issue of a corporation they shall also join in bringing out any subsequent issue of the same

corporation. This is described as a principle of banking ethics. It is thus stated by Mr. Hine, president of the First National Bank of New York (R., 2045, 2046):

Q. Recently your bank made an issue, jointly with J. P. Morgan & Co. and the National City Bank, of Chicago & Western Indiana Railway bonds, of ten millions, did it not?

A. Notes.

Q. Ten millions of notes, yes. Why was it necessary that three great banking houses should join in an issue of that kind?

A. I do not know of any reason.

Q. Was it not because they had been jointly interested in previous issues of the same company?

A. I do not know that it was.

Q. Had they been jointly interested in previous issues?

A. I think they had.

Q. Is it or is it not the custom when banking houses are interested or become interested in one kind of issues of a company that they retain that interest in other issues?

A. Often it is so.

Q. That is part of the banking ethics, is it not?

A. Yes, I would say it is; on satisfactory terms.

Q. Is it another rule of banking ethics that bankers shall not interfere with one another's customers?

A. The same ethics obtain in banking that obtain in the legal profession and in the medical profession as to infringing upon the preserves of others.

Q. Well, what are the ethics in the banking profession as to trespassing upon the preserves of others?

A. If you will tell me what the ethics are in the legal world, I will answer your question.

Q. No; I would rather have you tell me the ethics in the world with which you are acquainted.

A. I can not state the matter any better than you have. It is the custom—I am not dealing in ethics.

Q. What is the custom among bankers and banking houses as to anyone interfering with another's customer in business?

A. I do not know whether there is any custom. I think it is considered unprofessional.

Q. Unbusiness-like?

A. And not in good form according to the highest principles of business practice.

Q. Is it not in accordance with banking ethics to interfere with or take customers away from firms; to take customers who have been doing business with some other banking house?

A. I think that is ordinarily considered high-minded practice not to do so.

Mr. Davison testifying on the same subject said (R., 1858 1859):

Q. Then you know of these three instances—the Chicago & Western Indiana Railway Co., the Kansas City Terminal Co., and the New York Central, all made within a few weeks jointly with other banking houses—those we have been discussing. Is there any rule or custom among bankers that where they make one issue of a company or are interested together in one issue they remain interested in subsequent issues?

A. For the same company?

Q. Yes.

A. As a matter of practice, if it was satisfactory in every particular, I should say it was the custom; yes. It is a matter of banking ethics.

Q. A matter of banking ethics?

A. I should say so; yes.

Q. If either one of the three thereafter gets an issue of that company it is a matter of banking ethics that it is for joint account, is it?

A. I should say that the natural way of handling that business would be to have it go to the parties who handled it before, if it were satisfactorily handled; yes.

Q. You mean if they have not had any differences or disagreements between themselves?

A. Yes, if it was satisfactorily handled.

Q. Have you not within the last few weeks also taken an issue of \$67,000,000 of American Telephone & Telegraph Co. bonds jointly with Lee-Higginson and other banking houses?

A. No.

Q. You participated with them in that issue?

A. Excuse me, I was going to answer your question. I think with others, not including Lee-Higginson & Co. as principals, but with Kidder, Peabody & Co., the First National, the National City Bank, Baring Bros. & Co. (Ltd.), of London, and Morgan-Grenfell (Ltd.), of London, we have underwritten an issue of \$67,000,000 of American Telephone & Telegraph Co. bonds.

Q. Are they the same parties—

A. I beg your pardon—and Kuhn, Loeb & Co.

Q. Are they the same bankers or banking houses with which you had previously underwritten issues of the American Telephone & Telegraph Co.?

A. Exactly; and that is a complete answer to your question.

Q. You have together underwritten, I think, \$150,000,000 of those bonds, have you not?

A. That is my recollection.

Q. So that the same rule of banking ethics required the same disposition of this issue as of the others?

A. I would not say it required it.

Q. It resulted in it.

A. It resulted in it, exactly.

Q. As a matter of fact, in business morals it would require it.

A. It would require it if everything was properly and satisfactorily handled, and there were no other factors in the situation which might make it inexpedient. The situation, when a transaction comes up, always governs.

Mr. Schiff was more guarded in his statement of the practice (R. 1666, 1668, 1669):

Q. And you would not, for instance, if you knew the Southern Railway was going to make an issue of securities, be willing to bid on them, would you?

A. We would not.

Q. In other words, these houses have their recognized clients, have they not?

A. To some extent.

Q. And is it not also recognized that they are their clients and that they are not to be interfered with?

A. I think that is going a bit too far, because there is very frequently interference or attempted interference.

Q. Has there ever been any interference with your exclusively handling the issues of the Union Pacific Railroad in the last 10 years?

A. I do not think so.

\* \* \* \* \*

Q. Have you any instance in mind in which in the last five years you have invaded the field of Messrs. Morgan & Co. or they have invaded yours?

A. I have not.

Q. Or have you in mind any instance in which you have invaded the field of the National City Bank or the First National Bank, or in which they have invaded yours?

A. As to the First National Bank, I know we have not. As to the National City Bank I can not say for certain. I think they would do business to a certain extent even where we are considered the agents, and we would do certain business where they are considered the agents; not to a large extent.

Q. Is not that where the corporation is a customer of both of you? Is not that the only case in which the corporation is claimed to be or regarded as a customer of both of you or either of you?

A. It is in cases where a corporation is regarded as a customer of neither.

Q. That is, in a case in which the field happens to be open?

A. Yes.

This custom, by whatever name it be called, and the practice of these great banking houses which it supplements of purchasing security issues in concert and not independently can not have any other effect than the suppression of competition in the purchasing of such securities, and the creation of a combination or community

of in cret which may grant or withhold credit as it wills and whose term borrowing corporations must accept.

*Unsafe concentration admitted.*—Mr. Reynolds, president of the Continental & Commercial National Bank of Chicago, was outspoken in the view that concentration of control of banking resources has already gone so far as to be a menace to the country (R., 1654, 1655):

Q. I suppose, Mr. Reynolds that as president of a great bank you have kept in touch with the very recent trend toward concentration and control of money and credit in the East?

A. Yes, sir; I have been constantly reminded of it in the last year or so

Q. You know the extent to which it has gone in the last few years?

A. I have a general knowledge of it; yes, sir.

Q. Do you or not know the effect that has on the marketing of securities of a great railroad and other interstate corporations, and the trend of concentration brought about through the concentration of this money and credit?

A. I have read all that has been adduced at this examination, and a great many other things, and my information in detail is very largely the result of this reading, rather than from personal experience.

Q. But you have information and knowledge of the conditions in New York, for instance, as between the great banking houses. That is a matter of personal knowledge?

A. Yes; I have a fairly general knowledge of that, I should say.

Q. What would you say as to that concentration of the control of money and credit being a menace to the country?

A. That involves a very deep question. Personally I am inclined to believe that an excess of power of any kind in the hands of a few men might properly be called a menace. I do not mean to say by that that the people who had that control and power have used it improperly. I do not mean to say that at all.

Q. Regardless of the way they have used it for the time being, the question is, is it not, as to the way they can use it?

A. I think a more wide distribution of the power of credit, if that is what you mean, would really be better in the long run.

Q. Taking the present situation as you find it, Mr. Reynolds, what is your judgment as to whether that situation is a menace?

A. I am inclined to think that the concentration, having gone to the extent it has, does constitute a menace. I wish again, however, to qualify that by saying that I do not mean to sit in judgment upon anybody who controls that, because I do not pretend to know whether they have used it fairly or honestly or otherwise.

Mr. Schiff also conceded rapid concentration of control of banking resources in New York in recent years, but he stated that it caused him no anxiety so far as the well-being of his own firm was concerned, as they were well able to take care of themselves. We quote (R., 1686-1687, 1688):

Q. Have you been an interested observer of the concentration and control of money and credit in New York in the last few years?

A. I have.

Q. You have seen it grow very rapidly, have you not?

A. Yes.

Q. And you have seen it drift into fewer and fewer hands, have you not?

A. It has drifted into fewer and fewer corporations.

Q. And the concentration and control of those corporations has drifted into fewer hands, has it not?

A. I am not sure that it has done that.

Q. Do you know anything about it?

A. Well, I think the stockholding in different—

Q. I say, do you know anything about it?

A. Not very closely.

Q. You have not watched it very closely?

A. I think stockholdings in most New York corporations are very well divided.

Q. We are not talking about stockholdings, but about practical control of management as distinguished from stockholding. You see the difference?

A. I see the difference.

Q. It is a very substantial difference, is it not?

A. Yes, sir.

Q. Now, confining yourself to the question of actual practical control of the management of these great moneyed corporations, you have observed, have you not, a growing concentration of control?

A. I have.

Q. And has it been a subject of concern to you?

A. No; it has not.

Q. You have been an interested onlooker in this concentration?

A. An observer; yes.

Q. And you have understood the possibility of its affecting you and your own sources of credit, have you not?

A. I have not been concerned in that.

Q. You do not require credit, then?

A. No.

Q. But you have considered its effect upon the small banking houses, not so fortunately situated as you, that do require credit?

A. Yes.

Q. Have you considered it?

A. Yes.

Q. And have you considered its effect on the ability of the smaller houses to grow and become great issuing houses?

A. Yes.

Finally, Mr. Baker, who is outranked only by Mr. Morgan, if at all, as a factor in the concentration of control of banking resources and credit into fewer and fewer hands in New York, frankly admitted that in his judgment the movement had gone far enough; that even if it stopped where it is the peril would be great if ambitious and not overscrupulous men should get into the places of power which have been created; and that therefore the safety of the existing system lies in the personnel of the men now in control. We quote from his illuminating testimony (R., 1567, 1568):

Q. I suppose you would see no harm, would you, in having the control of credit, as represented by the control of banks and trust companies, still further concentrated? Do you think that would be dangerous?

A. I think it has gone about far enough.

Q. You think it would be dangerous to go further?

A. It might not be dangerous, but still it has gone about far enough. In good hands, I do not see that it would do any harm. If it got into bad hands, it would be very bad.

Q. If it got into bad hands, it would wreck the country?

A. Yes; but I do not believe it could get into bad hands.

Q. You admit that if this concentration, to the point to which it has gone, were by any action to get into bad hands, it would wreck the country?

A. I can not imagine such a condition.

Q. I thought you said so.

A. I said it could be bad, but I do not think it would wreck the country. I do not think bad hands could manage it. They could not retain the deposits nor the securities.

Q. I am not speaking of incompetent hands. We are speaking of this concentration which has come about and the power that it brings with it getting into the hands of very ambitious men, perhaps not overscrupulous. You see a peril in that, do you not?

A. Yes.

Q. So that the safety, if you think there is safety in the situation, really lies in the personnel of the men?

A. Very much.

Q. Do you think that is a comfortable situation for a great country to be in?

A. Not entirely.

### PART III.—CONCLUSIONS AND RECOMMENDATIONS.

#### CHAPTER FIRST.—AS REGARDS CLEARING-HOUSE ASSOCIATIONS.

##### SECTION 1.—INCORPORATION AND REGULATION.

National banks should not be permitted to be members of clearing-house associations which are not bodies corporate of the several States in which they are located.

These associations sustain so vital and delicate a relation to the financial arrangements of the country, especially to the national banking system, that their supervision and regulation in the interest of the public are essential. The service they perform is so nearly indispensable to the banks and trust companies themselves that every such institution which is solvent and properly managed should enjoy and be able to enforce the right to become and remain a member.

These two ends can not be accomplished so long as the associations remain mere voluntary organizations, possessing practically unlimited discretion in the regulation of their membership and affairs.

On the other hand, if the associations were required to be bodies corporate, the lawmaking power, as a condition of their creation, could exact and exercise complete and summary supervision over them; and any bank or trust company applying for or seeking to retain membership could have its right thereto reviewed by the courts.

Nearly all the bankers called by the committee seem to agree to the wisdom of incorporating and regulating clearing-house associations. (Cannon, R., 225, 226; Reynolds, R., 1654; Schiff, R., 1690; Sherer, R., 164, 166; Knox, R., 550; Frew, R., 594-596.)

Mr. Cannon, president of the Fourth National Bank of New York, said (R., 225, 226):

Q. You believe it [referring to the clearing-house association] ought to be incorporated, do you not?

A. I believe it ought to be incorporated, and I believe it is responsible to law.

Mr. Frew, president of the Corn Exchange Bank of New York and chairman of the clearing-house committee of the New York association said (R., 594):

Q. You have no objection to the incorporation of the clearing-house association, have you?

A. Under certain conditions, no.

Mr. Reynolds, president of the Continental & Commercial National Bank of Chicago, said (R., 1654):

Q. I forgot to ask you whether you did or did not approve of the incorporation of the clearing house and its subjection to direction and control.

A. I would approve of it, yes, sir; if some law can be passed through which it can be incorporated without interfering with the free and automatic conduct of the business. I suppose that would follow, as a matter of fact, if it were incorporated.

Mr. Jacob H. Schiff testified (R., 1690):

Q. In your opinion, should it (the clearing house) be incorporated and made subject to legal control?

A. I think it would be better if the clearing house were incorporated.

There is likewise a preponderance of opinion favorable to the governmental review of the acts of clearing-house associations on the admission or expulsion of members.

Mr. Sherer, manager of the New York association, said (R., 164, 166):

Q. Do you not think that the law ought to be amended as affecting an interstate institution like the clearing-house association so that the courts can review the action of the committee in refusing a man the right to remain in the clearing house when the ownership of the bank changes or put him out on account of the change of ownership?

A. Oh, yes; because whenever there is a wrong there should be a way to correct it.

Q. So there you agree with us?

A. Yes.

Q. But as against that if some day the clearing-house committee took it into its head that they did not think he was a proper member they could end him, could they not?

A. Yes; they could take away any bank's privileges.

Q. I am not speaking of any power of the Comptroller of the Currency or a case where a bank is closed by Federal authority or State authority; I am speaking of the exercise of the power of the clearing-house association to stop a member bank clearing for a nonmember having the effect of closing that nonmember bank without Federal or State authority.

A. Are they responsible for the effect?

Q. Do you not think that is too great a power without judicial review? Frankly, please tell us what you think.

A. No; not as it affects us.

Q. Very well, then; if you think it is not, I am surprised. Why should not such a power be subject to judicial review?

A. I agree with you to an extent, but its application, through this instrument here, is not as bad as you infer.

Q. Not as bad as it looks?

A. No.

Q. It looks pretty bad, does it not?

A. Yes. It has always been administered with care.

Q. I am not talking about the administration; I am talking about the law of the association. You admit that power ought to be subject to judicial review, do you not?

A. Yes.

Mr. Cannon said (R., 226, 227):

Q. And you are also in favor of its being regulated by law (referring to the clearing house)?

A. Sure.

Q. But you are in favor of every applicant who subscribes to certain conditions having the right of membership?

A. That is covered.

Mr. Knox, vice president of the Mellon National Bank of Pittsburgh, testified (R., 550):

Q. Let us suppose that the banking authorities would have to concur before they were allowed to close up a bank by suspending its clearances; that would be a remedy, would it not?

A. Do you mean the national banking authorities?

Q. Where it is a national bank, we will say the national banking authorities; where it is a State bank suppose we say the State banking authorities. If their concurrence had to be obtained that would furnish a protection, would it not?

A. Yes; certainly.

Q. That would be a wholesome thing, would it not?

A. Probably it would.

Mr. Frew testified (R., 594, 595, 596):

Q. And you would see no objection, would you, to requiring the approval of the State banking department as to a State bank, or of the Comptroller of the Currency as to a national bank, before closing a bank—expelling it?

A. Not in the least.

Q. You would not see any objection to it?

A. No, sir.

\* \* \* \* \*

Q. Do you not think that authority ought to rest somewhere, either in the courts or in the banking department or somewhere, to review their action in refusing admission to a bank?

A. I do not see the necessity, but I have no objection to it.

## SECTION 2.—ADMISSION OF THE SMALLER BANKS TO MEMBERSHIP.

The smaller banks, if sound and well managed, should not be excluded from membership by prescribing a certain minimum capital stock as one of the qualifications of members.

Where this requirement exists, as in the New York Association, a small bank can only enjoy the nearly indispensable facilities of the clearing house by clearing through the agency of a member bank, which may at any time summarily and arbitrarily terminate its agency, with the almost certain result, as the testimony shows, that its action will be construed by the public as reflecting on the integrity of the nonmember bank, thereby causing a run on it and the consequent closing of its doors. Under such conditions the small banks are at the mercy of the larger ones which act as their clearing agents.

They are also subject to all the rules and regulations of the association and have no voice or representation in its management. No reason for such unjust discrimination has been suggested.

This unhealthy condition would be corrected if sound small banks were admitted to the clearing-house association on equal terms with their more powerful competitors. This is the case in Chicago, and, as remarked above, the chairman of the clearing-house committee of the New York association is also of the opinion that—

It would be a very much better thing to have every bank that is well managed in the clearing house. (Frew, R., 634.)

## SECTION 3.—EXAMINATION OF MEMBERS.

The system recently inaugurated of regular, periodical examinations of members under direction of a committee of the association itself, now in vogue, notably in New York and Chicago, while praiseworthy in purpose, is fraught with danger, since it makes it possible for the few members who constitute the governing committee to gain an intimate knowledge of the business and affairs of their competitors, destroys the independence of the smaller banks, and places the private affairs of our merchants and other borrowers generally at the mercy of those in control of the association. Incidentally it is a serious

indictment of both our national and State systems of governmental inspection.

In place of these examinations it is recommended that those by the public authorities be made comprehensive and thorough so as to leave no necessity for any supplemental examinations. This of course will make necessary a substantial increase in the examining force of the Comptroller of the Currency.

From all accounts this is sadly needed. The present examinations are admittedly superficial and not sufficiently frequent to constitute a protection to the community. It is evident from Mr. Murray's testimony that owing to the insufficiency of the staff the authorities are growing to rely more and more upon the elaborate staffs of the associations.

This should not be permitted to continue. If the banks are able voluntarily to enforce upon one another and can wisely afford to pay for these thorough and frequent investigations there is no reason why they should not make the same payment for the official examinations, equally elaborate and frequent, and free from opportunities for favoritism and injustice. Competitors should not be permitted to sit in judgment upon one another in matters of public concern.

It is accordingly proposed to provide for this expense of examination, as prescribed by the accompanying bill, by having the association designate the number of additional examiners that it desires for the national banks and to pay the cost of such service. This would not increase their existing burden. It would merely transfer these examinations from the jurisdiction of the association to that of the comptroller and restore to each bank its independence of central authority as regards the private affairs of its customers.

#### SECTION 4.—ISSUANCE OF CLEARING-HOUSE CERTIFICATES.

Until other measures of relief are provided by Congress, clearing-house associations should be permitted to issue certificates on the security of their members' assets for circulation amongst members to pay balances owing to each other at the clearing house, but only on condition that both the issuance and retirement of such certificates shall be under governmental control, as is now temporarily provided by the emergency currency act of May 30, 1908, which expires in 1914.

The purpose of the issuance of such certificates is to afford relief to solvent banks in times of stress and panic, when currency has gone into hiding. Under the system of government prevailing amongst clearing-house associations a small committee—the regular clearing-house committee or a special loan committee or both together—determine to whom the certificates shall be issued and when they shall be retired. Since at such a time whether a bank can obtain certificates or must retire those already obtained is for it a matter of life and death, this arrangement puts in the hands of the few banks—usually the greater ones—represented on these committees a dangerous power over their weaker competitors. We do not say that such power has been corruptly exercised, but there is a decided preponderance of evidence that it has been at least mistakenly exercised

with disastrous consequences. The objection would be removed if the decisions of the committee were reviewable by the Comptroller of the Currency in cases affecting national banks and by the several State banking departments in cases affecting State banks and trust companies.

#### SECTION 5.—REGULATING RATES FOR COLLECTING OUT-OF-TOWN CHECKS.

The practice now so general amongst clearing-house associations of compelling members, upon pain of expulsion, to charge prescribed rates for collecting out-of-town checks suppresses competition in a very important commercial service and is a clear usurpation of power vested by law in the officers and directors of the respective member banks, since, as we have seen, these associations perform no function whatever in connection with such collection.

Before the adoption of such a rule the members of the association were competing in the collection of out-of-town checks, with consequent varying charges, or no charge at all in many instances, use of the customer's money being deemed adequate compensation for the collection service. (Cannon, R., 219, 222; Hepburn, R., 306; Frew, R., 622.)

The effect of the rule is completely to destroy such competition, as was admitted:

Q. I am not sure that I asked you this morning what, in your judgment, would be the effect of the abrogation of this clearing-house rule that compels every member of the clearing-house association to charge this minimum rate of collection, and the giving permission to each bank to deal with its own customers as it saw fit.

A. It would introduce more or less confusion in the handling of the items.

Q. It would introduce competition between the banks, would it not?

A. Yes.

Q. And the introduction of competition between the banks would mean, would it not, better terms for the customers?

A. Well, it is fair to assume that competition would tend that way. (Hepburn, R., 309, 310.)

Q. And the clearing-house association by this arrangement stopped that competition, did it not?

A. It stopped that element of that competition which they considered ruinous.

Q. To what bank had it ever been ruinous? They had all been making money, had they not?

A. Yes, sir.

Q. It was not ruinous to your bank, was it?

A. No.

Q. You mean that it was ruinous in the sense that you would have an expense in the business that you could avoid?

A. That is it. (Frew, R., 622-623.)

In a recent case, *International Text Book Co. v. Pigg* (217 U. S., 91), the Supreme Court held that a school systematically instructing students in different States by correspondence is engaged in interstate commerce. The basis of the decision was the principle announced by Chief Justice Marshall in *Gibbons v. Ogden* (9 Wheat., 1, 18), that whilst "commerce, undoubtedly, is traffic \* \* \* it is something more; it is *intercourse*." If the business of a correspondence school is commercial intercourse, for greater reason must the business of collecting bank checks be of that character.

If, then, the collection by a bank in one State of checks drawn on banks of a different State shall be deemed an operation of interstate commerce, a combination amongst the banks so engaged, with the purpose and effect of suppressing competition and enforcing a uniform rate for their service, restrains interstate commerce within the settled meaning of the act of July 2, 1890. (*Addyston Pipe Co. v. United States*, 175 U. S., 211; *Swift & Co. v. United States*, 196 U. S., 375; *Northern Securities Co. v. United States*, 193 U. S., 197; *Dr. Miles Medical Co. v. Park & Sons Co.*, 220 U. S., 373; *Standard Oil Co. v. United States*, 221 U. S., 1; *United States v. American Tobacco Co.*, 221 U. S., 106; *United States v. Terminal Railroad Assn.*, 224 U. S., 383.)

Again, any agreement or compact by which a corporation attempts to transfer the management and control of its business in an essential particular from its own officers, directors, and stockholders to an outside body, is in excess of its powers and contrary to law, and subjects its charter to forfeiture if the result produced tends to the public injury. (*People v. North River Sugar Refining Co.*, 121 N. Y., 582; *State v. Standard Oil Co.*, 49 Ohio St., 185; *Union National Bank v. Hill*, 148 Mo., 380; 49 S. W., 1012; *Morse on Banks*, 3d ed., sec. 116.) The basis of this rule is that the law creating the corporation having provided a body to manage its business, none other may be substituted by private arrangement.

The law requires that a corporation should be controlled and managed by its directors in the interests of its own stockholders, and conformable to the purpose for which it was created by the laws of its State. (*State v. Standard Oil Co.*, supra.)

This principle is especially applicable to corporations performing the delicate and public function of banking.

Within reasonable and moderate limits, so narrow that their general supervision must practically cover all which their delegates can do within these limits, they (bank directors) may confer powers by general resolution which may be valid for an indefinite period and for any number of separate transactions. But authority so large as to transfer in an important degree the control of the corporate affairs they can not confer. (*Morse on Banks*, 3d ed., sec. 116.)

Collecting out-of-town checks is a very important part of the business of banks in every large city. In an average year the banks in the New York Clearing House Association collected out-of-town checks to the amount of \$4,859,187,900. Therefore a national bank agreeing to transfer from its own officers and directors to an outside body—the clearing house—absolute power to say what, if anything, it shall charge for this important service, on the principle above stated violates its charter. The purpose and effect of such agreement being to suppress competition in a service of vast importance to commerce, it must be held injurious to the public interests, in accordance with the settled policy of the country as regards agreements to suppress competition; and therefore the charter of the bank may be forfeited.

If a national bank, without violating its charter, may delegate to an outside body power to say what it shall charge for collecting out-of-town checks, why may it not agree that such an outside body shall determine rates of interest or discount it will charge as has been done in one of the associations and attempted in others. Or what rates of interest it will allow on deposits. Or what loans and other investments it will make.

The impropriety of these practices is no plainer than the enforcement by such associations of uniform rates for collecting out-of-town checks.

That there is no distinction in principle was admitted by the president of the Pittsburgh Clearing House Association (Wardrop, R., 557):

Q. Do you see any distinction, so far as interfering with the action of the directors in managing their banks is concerned, between telling them how much they shall charge for collecting out-of-town checks and telling them how much interest they shall allow the depositors on their deposits?

A. No, sir; I do not see any difference.

Q. One is just as much an interference with the liberty of the directors and the conduct of their business as the other, is it not?

A. I think so.

The common vice of all practices of the kind is the use of the power of the clearing-house association to destroy competition amongst its members in transactions admittedly outside its province, and the enforced surrender by such members of the control of their affairs to a foreign body.

Your committee is thus of the opinion, first, that the practice in question is within the prohibitions of the antitrust act, since it suppresses competition in an interstate commercial service of great importance; secondly, that it is violative of the charter of national banks since it transfers from their own officers and directors to an outside body the power to determine their course in this important feature of their business and the result being injurious to the public interests in that as stated it suppresses competition in an important commercial service and imposes upon the merchants of the country a burden that they were not generally required to bear until the rule was enacted, the violation is of that character which justifies the forfeiture of the charter of any bank persisting in it.

It is therefore recommended that the Comptroller of the Currency give notice to all national banks which have delegated the regulation of their charges for collecting out-of-town checks to clearing-house associations, that unless they forthwith reclaim and exercise such power proceedings will be taken to forfeit their charters.

#### SECTION 6.—REGULATION OF RATES OF DISCOUNT AND OF INTERESTS ON DEPOSITS.

For the same reasons that they should not be permitted to regulate the charges for collecting out-of-town checks, clearing-house associations should also be prohibited from prescribing rates of interest or discount, rates of interest allowed on deposits, rates of exchange or any other regulation not appropriate to its function as an instrumentality for the collection of checks by banks of the same community one from another. Few associations have attempted regulations of this character and that they should not be permitted to do so was the practically unanimous judgment of the bankers who testified. (Scherer, R., 158; Cannon, R., 218; Vanderlip, R., 278; Frew, R., 628.)

The accompanying bill to amend the national banking law embodies among other things the legislation recommended by your committee on this subject.

## CHAPTER SECOND.—AS REGARDS STOCK EXCHANGES.

### SECTION I.—NEED OF GOVERNMENTAL REGULATION.

The stock exchanges in our principal cities, and especially those in New York, Chicago, Philadelphia, Pittsburgh, and Boston, are essential instrumentalities in the conduct of modern business and finance. Their local habitation has little relation to their sphere of usefulness or to their capacity for evil if permitted to be utilized for illegitimate ends. The main inquiry on this subject has been into the operations of the New York Stock Exchange, which are probably greater in volume of transactions than all the others combined, but the conclusions reached as to that apply also to the others.

The contention of the New York Stock Exchange that it is not engaged in business and that its sole function is to supply a meeting place where its members may deal with one another under prescribed rules is not borne out by the facts, as hereinabove stated.

It is the market place of the entire country and of foreign countries for securities and the only public market in the United States where money is loaned and borrowed.

The business transacted by its members comes to them from almost every corner of the civilized world. Its hall mark as to the genuineness of a certificate of interest in a corporation passes current everywhere and is rightly supervised with jealous care and at considerable expense to the corporations concerned.

It undertakes to prescribe the form and conditions of every corporate security in which it authorizes dealings and its determination is final through its control over the listing of such securities. It reserves the right to exact minutest details of the business and affairs of the issuing corporation, to impose its will in the matter of the procedure by which such corporation shall declare and pay interest and dividends, and in the matter of the transfer agents and registrar, and as regards endless other details; all this very properly on the ground that it is performing a national public function.

It jealously controls the reports as to every transaction on its floor, issues and distributes the records of every purchase and sale, or offer of purchase and sale, which it thereby impliedly represents as an honest and genuine transaction. Courts of justice, trustees, financial institutions, and the public the world over act on this information. It exacts compensation for the service of listing securities, sells its quotations to interstate and international telegraph companies for large sums of money and scatters them broadcast over the country through the newspapers, over the telephone and telegraph, but always under its control.

Great and much-needed reforms in the organization and methods of our corporations may be legitimately worked out through the power wielded by the stock exchange over the listing of securities.

Much of the confusion and many of the defects in corporate regulation due to the diversity of State laws and to the bidding of the States against one another in laxity of administration in order to attract corporations within their borders may be corrected and uniformity of methods introduced through the listing department of the exchange.

Thus complete publicity as to all the affairs of a corporation may be uniformly enforced. The scandalous practices of officers and directors in speculating upon inside and advance information as to the action of their corporations may be curtailed if not stopped. In short, its opportunities as an agency of corporate reform are almost endless, provided its own practices can be reformed so as to entitle it to exercise these broad powers. Instead of the investment business of the country abandoning the exchange, as is now and has been to some extent the case for some time past, it will become necessary to the reputation and salability of a security that it should be listed. The general public, which has grown to look upon the exchange with distrust because of the practices that have been permitted, will be given new confidence in it when it is under legal supervision.

Notwithstanding these facts it contends that it should be permitted to continue its voluntary organization with the privileges and freedom of action of a private club and should not be made subject to legislative or judicial control or supervision, and that it is not amenable to Federal regulation in its use of the mails and of the telegraph and telephone in interstate commerce and in the dealings of its members with foreign countries.

To this contention your committee is unable to agree. It is incongruous that such an institution wielding such power and equipped to perform such useful and important functions in our economic system should be uncontrolled by law.

On the other hand, your committee believes that incorporation and regulation would banish from the exchange transactions which now disgrace it, bringing in their place a greater volume of business of an investment and otherwise legitimate character, and marking the dawn of a new era of prosperity for its members and of usefulness to the public.

#### SECTION 2.—PROVINCE OF FEDERAL GOVERNMENT.

It is doubtful, however, whether the Federal Government has power generally to regulate stock exchanges. We therefore advise no action by Congress to correct such local abuses in the operations of the New York Stock Exchange as its effort to drive rival exchanges in the city of New York out of business by the methods disclosed, and its refusal to list securities unless engraved by a concern approved by the exchange, though the last might be reached as an attempt to monopolize the business of engraving securities. Nor do we advise any action by Congress in reference to the exchange's rules regulating commissions and limiting the membership, these also being of local effect.

As regards the rates of commission enforced by the exchange your committee believes the present rates to be reasonable, except as to stocks, say, of \$25 or less in value, and that the exchange should be protected in this respect by the law under which it shall be incorporated against a kind of competition between members that would lower the service and threaten the responsibility of members. A

1  
8  
7

very low or competitive commission rate would also promote speculation and destroy the value of membership.

For the same reasons we are of opinion the existing limitation of membership should not be disturbed at this time.

But whether stock exchanges in their wholly local and internal relations may be regulated by Congress or not, where they lend their facilities for transactions injurious to the public interests at large, Congress may prevent any instrumentality under its control from being used to multiply and spread such transactions; and it is its obvious duty to do so.

It has appeared that sales of stocks on the New York Stock Exchange average \$15,500,000,000 annually; that but a small part of these transactions is of an investment character; that whilst another part represents wholesome speculation, a far greater part represents speculation indistinguishable in effect from wagering and more hurtful than lotteries or gambling at the race track or the roulette table because practiced on a vastly wider scale and withdrawing from productive industry vastly more capital; that as an adjunct of such speculation quotations of securities are manipulated without regard to real values and false appearances of demand or supply are created, and this not only without hindrance from but with the approval of the authorities of the exchange, provided only the transactions are not purely fictitious.

In other words, the facilities of the New York Stock Exchange are employed largely for transactions producing moral and economic waste and corruption; and it is fair to assume that in lesser and varying degree this is true or may come to be true of other institutions throughout the country similarly organized and conducted.

Your committee believes, therefore, that Congress has power unconditionally to prohibit the mails, the interstate telegraph and telephone, the national banks, and all other instrumentalities under its control, from being used in executing, negotiating, promoting, increasing or otherwise aiding transactions on such stock exchanges.

### SECTION 3.—CONDITIONS REQUIRED TO BE MET.

Your committee, however, is of opinion that to a great extent the objectionable features of operations on stock exchanges would be eliminated if the following conditions were met:

(a) *Incorporation.*—If such exchanges were to become bodies corporate of the States or Territories in which they are respectively located.

Whilst, of course, they can not now do anything contrary to law, nevertheless the State can not exercise in their case that comprehensive control and close and summary supervision which it may exact of corporate bodies as a condition of permitting them to exist at all. If such exchanges were required to incorporate, the State could write into their charters provisions calculated to restrict them to legitimate purposes and suppress the abuses described; and by a system of examinations and penalties could enforce such provisions.

The principal objection urged by the exchange against incorporation is that it will interfere with its power of discipline over its members and thus lower the standard that has been reached and that can

only be maintained by an unquestioned final authority. Not wishing to criticize harshly, we are yet bound to say that we do not consider the standard attained by the exchange under freedom from governmental supervision to be of such character as to constitute a valid reason against such supervision.

But aside from that, no reason is perceived why any such result as suggested should follow from giving to an accused member whose reputation and entire business career and means of livelihood depend on the action of his comembers and competitors the manifest measure of justice of a review by an impartial authority. There is no danger that the courts will deal less severely or less effectually than has the exchange with the frauds practiced upon the public which it is the purpose of incorporation and regulation to prevent and punish. That would be difficult. Nor are they likely to regard manipulation with any less disfavor.

(b) *Publicity of affairs of corporations.*—If such exchanges required corporations whose securities are listed by them to file before the listing and thereafter at regular intervals, for public inspection, a verified statement showing item by item their assets and liabilities and income and expenses, and for what their capital stock has been issued, stating how much for property and other considerations, with a description of such property and considerations and a statement of any commissions paid to promoters, brokers, middlemen, or vendors; a verified copy or statement of any contract, whether in writing or parol, in any manner affecting the issue sought to be listed or relating to any interest therein of promoters, bankers, middlemen, or vendors; and a verified statement of any transactions, direct or indirect, between such corporations and their officers and directors.

By such publicity misrepresentations of the value of securities and speculation promoted by intimations of "hidden assets" would be rendered more difficult, if not impossible.

(c) *Margin of 20 per cent.*—If they required that no orders to purchase the stock of any corporation shall be executed without a partial payment of not less than 20 per cent of the price agreed to be paid therefor.

Such a requirement would obviously curb speculation; the smaller the margin required the larger the number of shares that a given sum can purchase.

(d) *Manipulation.*—If they prohibited so far as possible the execution of simultaneous or substantially simultaneous orders proceeding from the same person or persons to buy and sell the same security for the purpose of creating an appearance of activity therein, and any orders the purpose of which is to inflate or depress the price of any security.

Such a regulation, effectively enforced, would go far toward abolishing the processes of manipulation.

(e) *Rehypothecation of securities.*—If they effectively prohibited members from pledging or hypothecating securities purchased and carried for the account of a customer for an amount greater than the unpaid portion of the purchase price, whether with or without the consent of such customer.

Without consent, such practice is misappropriation, and in any case, as we have seen, it seriously endangers the safety of the customer's securities, making redemption in the event of the broker's

failure possible only, if at all, by payment of the full amount borrowed by the broker.

This injurious result might be avoided if the broker were required to state on the loan envelope opposite each item of collateral the amount owing to him thereon, and were prohibited by law from borrowing and the banks from lending any larger amount. The only important objection that a governor of the stock exchange was able to offer to a reform so manifestly demanded in the interest of honest business dealing was that it would require brokers to double their clerical forces. (Sturgis, R. 800-801.)

Members have recently sought to destroy the force of this criticism by printing upon their statements or requiring the customer to subscribe a consent to this use of his securities. (Wollman, R., 1786, 1787.) Your committee is of opinion that the exchange should prohibit its members from making such stipulations and arrangements. They tend to increase speculation, and there is no reason why a broker should enforce from his customer the right to do business with the customer's capital. Every just interest is served by permitting the broker to borrow to the full extent of the sum owing him by his customer.

(f) *Lending customers' securities.*—If they effectively prohibited one member from lending to another securities carried by the former for customers, whether with or without such customer's consent.

This practice likewise endangers the customer's securities.

Furthermore, it facilitates short selling, and whilst we do not think that speculation for the fall any more than for the rise should be prohibited altogether, yet devices especially designed to promote either should not be permitted, since the evil in all speculation is the abuse of it by carrying it beyond natural bounds.

(g) *Admissions to and removals from list.*—If their charters stated the conditions on which issues of securities shall be admitted to or removed from the trading list and provided that in every case their action in this regard shall be subject to judicial review at the suit of the issuing corporation or any owner of the securities.

This would prevent the use of the valuable privilege of "listing" as a club to coerce holders into selling their securities and otherwise to manipulate the market. It would also prevent the manifest injustice to investors of depriving them of their market and destroying the availability of their security for loans, which existed when they bought.

The rule authorizing the removal of a stock from the list is defended on the ground that where all but a small proportion of an issue is held in a single control it is easier to manipulate the price of it and create a corner in it. This contention when analyzed amounts to the assertion that an investor who bought his stock relying upon its being a listed security must be penalized in order to protect a speculator who may sell stock that he does not own and is unable to buy it to make delivery. No one who owns what he is selling is in danger of a "corner."

On the other hand, as we have seen, the exercise of this power to strike a stock from the list is fraught with the most serious consequences to investment holders of securities, and its abuse in the interest of powerful financial groups is an easy matter. Its exercise may be made to operate as a distinct fraud upon the innocent investor.

(h) *Books of account.*—If such exchanges required members to keep full and accurate books of account, showing the actual names and transactions of their customers and to give access thereto not only to officers of the exchange but to the appropriate State officers and the Postmaster General.

Such a regulation would facilitate the detection of the objectionable practices sought to be eradicated. It is the only way in which detection can be assured.

Your committee therefore recommends that the use of the instrumentalities under the control of the Federal Government in aid of transactions on stock exchanges be prohibited by act of Congress only where such exchanges refuse to comply with the foregoing conditions.

More specifically, such legislation should prohibit the transmission by the mails or by telegraph or telephone from one State to another of orders to buy or sell or quotations or other information concerning transactions on stock exchanges not complying with the conditions named.

A bill embodying these recommendations accompanies this report.

#### SECTION 4.—POWER OF CONGRESS TO DENY USE OF MAILS AND TELEGRAPH.

Since the power of Congress to enact such prohibitions may be questioned, your committee feels called upon to discuss that question. The cognate questions whether Congress might not prohibit national banks from buying or selling or lending upon the security of stocks and bonds listed on stock exchanges not complying with the conditions named, or might not impose a tax upon transactions on such stock exchanges, will also be discussed, though such a prohibition or tax is not now recommended.

1. *Congress may prohibit the transmission through the mails of orders to buy or sell or quotations or other information concerning transactions on stock exchanges which permit the use of their facilities for gambling and other purposes detrimental to the public interests.*

In *Matter of Jackson* (96 U. S., 727), sustaining the constitutionality of an act of Congress barring from the mails any "letter or circular concerning lotteries, so-called gift concerts," etc., the Supreme Court declared that the power "To establish post offices and post roads" conferred upon Congress by the Constitution—

"embraces the regulation of the entire postal system of the country. The right to designate what shall be carried necessarily involves the right to determine what shall be excluded" (p. 732)—

and that under this power Congress may withhold the use of the mails for purposes "supposed to have a demoralizing influence upon the people" (p. 736).

In *Ex parte Rapier* (143 U. S., 110) reconsideration of this decision was asked on the ground that the avowed purpose of the act was to suppress lotteries, gift enterprises, etc., and that since Congress is without power to regulate or prohibit such enterprises it was unconstitutional to accomplish their suppression indirectly by denying them the facilities of the mails—that the power to establish and maintain a

postal system could not be employed to regulate a subject not within the powers of Congress. But the Supreme Court adhered to its decision in the earlier case, saying (pp. 133-135):

It was held that the power vested in Congress to establish post offices and post roads embraced the regulation of the entire postal system of the country, and that under it Congress may designate what may be carried in the mail and what excluded; that in excluding various articles from the mails the object of Congress is not to interfere with the freedom of the press or with any other rights of the people, but to refuse the facilities for the distribution of matter deemed injurious by Congress to the public morals;

\* \* \* \* \*

The States before the Union was formed could establish post offices and post roads and in doing so could bring into play the police power in the protection of their citizens from the use of the means so provided for purposes supposed to exert a demoralizing influence upon the people. When the power to establish post offices and post roads was surrendered to the Congress it was as a complete power, and the grant carried with it the right to exercise all the powers which made that power effective. \* \* \*

The argument that there is a distinction between *mala prohibita* and *mala in se*, and that Congress might forbid the use of the mails in promotion of such acts as are universally regarded as *mala in se*, including all such crimes as murder, arson, burglary, etc., and the offense of circulating obscene books and papers, but can not do so in respect of other matters which it might regard as criminal or immoral, but which it has no power itself to prohibit, involves a concession which is fatal to the contention of petitioners, since it would be for Congress to determine what are within and what without the rule; but we think there is no room for such a distinction here, and that it must be left to Congress in the exercise of a sound discretion to determine in what manner it will exercise the power it undoubtedly possesses. \* \* \* The circulation of newspapers is not prohibited, but the Government declines itself to become an agent in the circulation of printed matter which it regards as injurious to the people. (Italics ours.)

In *Public Clearing House v. Coyne* (194 U. S., 497) the Supreme Court, reaffirming *Matter of Jackson and Ex parte Rapier*, supra, declared that "the postal service is by no means an indispensable adjunct to a civil government, but is a public function, assumed and established by Congress for the general welfare" (p. 506); that "the legislative body, in thus establishing a postal service, may annex such conditions to it as it chooses" (p. 506); and that under its power to determine what shall be excluded from the mails, Congress may "forbid the delivery of letters to such persons or corporations as, in its judgment, are making use of the mails for the purpose of fraud or deception or the dissemination among its citizens of information of a character calculated to debauch the public morality" (pp. 507, 508).

Whether the judgment of Congress as to what shall be excluded from the mails is subject to judicial review has not been definitely decided. In *American School of Magnetic Healing v. McAnnulty* (187 U. S., 94, 107), the Supreme Court conceded for the purposes of that case, without deciding, "that Congress has full and absolute jurisdiction over the mails, and that it may provide who may and who may not use them, and that its action is not subject to review by the courts, \* \* \*." In *Burton v. United States* (202 U. S., 344, 371) it was observed that the exclusion must be "consistent with the rights of the people as reserved by the Constitution."

From the foregoing cases these propositions are deducible:

1. Power to establish and regulate the postal system is vested by the Constitution in Congress as completely as it was formerly possessed by the States within their respective borders, and consequently whatever regulation might be made by a State had the subject not

been transferred to the Federal Government may now be made by Congress.

2. In the exercise of this power Congress may determine what shall be carried in the mails and what excluded. It is under no duty to become an agent in the circulation of matter promoting enterprises which it regards as injurious to the people simply because it can not directly regulate or prohibit those enterprises.

3. Since the *whole* power to regulate postal affairs was transferred from the States to the Federal Government without diminution, Congress may exclude matter from the mails on any ground available to the States had they retained such power under the Constitution, whether that ground of itself is within the province of Congress or not. For example, Congress has no power to prohibit lotteries, but it may deny them the facilities of the mails with the object in view of suppressing them (*Ex parte Rapier* supra). If Congress could not so exclude matter save to accomplish objects in respect of which it might legislate directly, the mails could be used without hindrance to serve improper ends. Congress could not interfere, because without power directly to prohibit those ends; while the States could not interfere, because without power to regulate the mails.

4. The power of Congress to exclude matter from the mails, being thus unaffected by the division of authority between the Federal Government and the States, is subject only to the limitation, if any, that the basis of exclusion must not be arbitrary or capricious nor discriminatory between those of the same class.

It follows that conceding the prevention of gambling and manipulation in the prices of securities to be not within the province of the Federal Government, this is no valid objection to a law excluding from the mails quotations or other information concerning transactions on stock exchanges not so organized and governed, in the opinion of Congress, as to prevent their facilities being used in aid of such gambling and manipulation.

Therefore if such a law is subject to judicial review at all, the only question is whether the judgment of Congress, that the dissemination of such information through the mails promotes objects injurious to the people, is arbitrary, capricious, and without reason. In practice it would be hard to conceive of a case where the courts, assuming they have the power, would substitute their judgment for that of Congress as to what is injurious to the people. Certainly none would gainsay that it is harmful to disseminate quotations of a stock exchange which does not prevent so far as possible the use of its facilities for gambling and to create fictitious prices. In *Otis & Gassman v. Parker* (187 U. S., 606) the Supreme Court upheld a statute avoiding all contracts for sales of corporate stock on margin, whether of a *bona fide* or gambling nature, saying (pp. 608, 609):

While the courts must exercise a judgment of their own, it by no means is true that every law is void which may seem to the judges who pass upon it excessive, unsuited to its ostensible end, or based upon conceptions of morality with which they disagree. Considerable latitude must be allowed for differences of view, as well as for possible peculiar conditions which this court can know but imperfectly, if at all. Otherwise a constitution, instead of embodying only relatively fundamental rules of right, as generally understood by all English-speaking communities, would become the partisan of a particular set of ethical or economical opinions, which by no means are held *semper ubique et ab omnibus*.

Again, in *Public Clearing House v. Coyne* (194 U. S., 497) the Postmaster General, acting under a law of Congress, was sustained in excluding from the mails matter concerning an enterprise which was not fraudulent, nor a lottery in the ordinary sense, but merely lacked the elements of a legitimate business (pp. 512-515).

Assuming it to have been established that Congress has power to exclude from the mails quotations or other information concerning transactions on stock exchanges whose facilities are used for gambling purposes or to create fictitious prices, what means may it employ to that end?

It may authorize the Postmaster General, subject to judicial review, to determine whether the objectionable practices exist as regards any exchange, and if so to exclude mail matter concerning the transactions on such exchange, in like manner as he is now authorized to exclude matter concerning enterprises found by him to be fraudulent or in the nature of lotteries. (*Public Clearing House v. Coyne*, 194 U. S., 497.)

Or, Congress may exercise the power directly by enacting that only those exchanges complying with certain prescribed conditions shall be deemed free from the objections stated and consequently at liberty to use the mails, leaving to the Postmaster General only the determination of whether such conditions have been met.

In the latter case doubtless the regulations must not be arbitrary but reasonably adapted to the end of preventing the facilities of exchanges being used for gambling purposes or to create fictitious prices. But it would be no objection that the end might be accomplished by different and less rigorous regulations or even without any at all. It would be enough if they had any real relation to the end. (*McCulloch v. State of Maryland*, 4 Wheat., 316, 421, 423.)

The power which the legislature has to promote the general welfare is very great, and the discretion which that department of the government has, in the employment of means to that end, is very large. While both its power and its discretion must be so exercised as not to impair the fundamental rights of life, liberty, and property, \* \* \* yet "in many cases of mere administration, the responsibility is purely political, no appeal lying except to the ultimate tribunal of the public judgment, \* \* \*." (*Powell v. Pennsylvania*, 127 U. S., 678, 685.)

Applying this principle the Supreme Court held that it could not override the legislative judgment that the protection of the public health required not merely that the manufacture of oleomargarine be so regulated as to exclude noxious ingredients but prohibited altogether; that the legislature had this choice of means. (*Powell v. Pennsylvania*, supra, pp. 685, 686.) Similarly, in *Public Clearing House v. Coyne* (194 U. S., 497, 510), it was held that in preventing the use of the postal service in aid of lotteries and fraudulent enterprises Congress is not confined to excluding matter relating to such enterprises but may prohibit the transmission or delivery of all matter sent by or addressed to persons engaged therein. Again, and of special application here, it was held in *Otis & Gassman v. Parker* (187 U. S., 606, 608, 609) that in order to suppress gambling in corporate stocks the legislature may avoid all contracts for the sale of such stocks on margin whether only a settlement of price differences or a *bona fide* acquisition of the stock is contemplated.

We conclude that Congress has power to prevent the use of the mails to disseminate quotations or other information concerning

transactions on stock exchanges whose facilities are used for purposes of gambling and price manipulation, and that exercising its wide choice of means to that end, it may prohibit the transmission through the mails of any information relating to transactions on exchanges refusing submission to regulations reasonably adapted to preventing the objectionable practices.

2. *Congress, by way of regulating interstate commerce, may prohibit the transmission from State to State by telegraph or telephone of orders to buy or sell, or quotations, or other information concerning transactions on stock exchanges which permit the use of their facilities for gambling and other purposes detrimental to the public interests.*

In the language of Chief Justice Marshall and Justice Johnson in *Gibbons v. Ogden* (supra), quoted with emphatic approval in the *Lottery case* (188 U. S., 321, 347, 348, 353):

The power over commerce with foreign nations and among the several States is vested in Congress as absolutely as it would be in a single government having in its constitution the same restrictions on the exercise of the power as are found in the Constitution of the United States. (Marshall, C. J.)

\* \* \* The grant of this power carries with it the whole subject, leaving nothing for the State to act upon. (Johnson, J.)

The power to regulate interstate commerce is thus vested in Congress as completely as if that were the only lawmaking body in our governmental system; as completely as a State possesses the power to regulate commerce wholly within its own borders. Therefore, whatever regulation a State may make as regards commerce within its territory, Congress may make as regards interstate commerce.

Transportation is commerce; when from State to State it is interstate commerce (*Railroad Co. v. Fuller*, 17 Wall., 560, 568; *Welton v. Missouri*, 91 U. S., 275, 280; *Mobile County v. Kimball*, 102 U. S., 691); and this is so whether that which is transported is an article of commerce—of barter and sale—or not. Thus, the transportation of persons is as much commerce as the transportation of goods. (Passenger cases, 7 How., 283, 401; *Gloucester Ferry Co. v. Pennsylvania*, 114 U. S., 196, 203; *Western Un. Tel. Co. v. Pendleton*, 122 U. S., 347, 356; *Covington, etc., Bridge Co. v. Kentucky*, 154 U. S., 204, 218.)

Likewise the transmission from State to State by telegraph of "ideas, wishes, orders, and intelligence" is interstate commerce, whether the matter so transmitted relates to articles of commerce or not; whether it is an order for goods or an invitation to dine. (*Western Un. Teleg. Co. v. Pendleton*, 122 U. S., 347, 356.) The same must be true of the transmission of "ideas, wishes, orders, and intelligence" by telephone. (*Muskogee Nat. Tel. Co. v. Hall*, 118 Fed., 382.)

The power to regulate interstate commerce embraces the power to regulate its instrumentalities. (*Welton v. Missouri*, 91 U. S., 275, 280; *Pensacola Teleg. Co. v. Western Un. Teleg. Co.*, 96 U. S., 1; *Gloucester Ferry Co. v. Pennsylvania*, 114 U. S., 196, 203.) The telegraph and, for the same reasons, the telephone are such instrumentalities. (*Pensacola Teleg. Co. v. Western Un. Teleg. Co.*, 96 U. S., 1; *Teleg. Co. v. Texas*, 105 U. S., 460; *Western Un. Teleg. Co. v. Pendleton*, 122 U. S., 347, 356.)

In *Western Union Teleg. Co. v. Crovo* (220 U. S., 364, 369) the Supreme Court said:

That companies engaged in the telegraph business, whose lines extend from one State to another, are engaged in interstate commerce, and that messages passing from one State to another constitute such commerce, is indisputable. Such companies and such messages come, therefore, under the regulating power of Congress.

It is thus seen that interstate telegraph and telephone lines and the transmission over them of messages between the States are under the control of Congress as absolutely as if this were a single government, subject to the guaranties of life, liberty, and property contained in the Constitution. (Lottery case, 188 U. S., 321, 353.) Manifestly, such a government would have power to prevent the telegraph and telephone being put to any use injurious to its citizens. Therefore Congress may prevent interstate telegraph and telephone lines from being used to promote ends injurious to the people of the United States. Whether it could legislate directly to prohibit those ends has nothing to do with the case.

Indeed, since in consequence of the supreme power of Congress over interstate commerce a State can not regulate the transmission of telegraphic and telephonic messages into other States (*Western Union Teleg. Co. v. Pendleton*, 122 U. S., 347), if Congress were powerless to prohibit the sending of such messages in aid of evil practices except where it may legislate directly against such practices, the result would be that interstate telegraph and telephone systems could be used without governmental hindrance to serve admitted abuses or even crimes.

The conclusion thus reached that Congress may prevent interstate telegraph and telephone lines from being used to promote ends injurious to the people at large, whether it could legislate directly to prohibit those ends or not, is sustained by the Lottery case (188 U. S., 321) upholding the constitutionality of an act whose avowed purpose was to suppress lotteries, which Congress could not directly forbid, by prohibiting the carriage of lottery tickets from one State to another; also by the decision rendered by the Supreme Court on February 24, 1913, upholding the constitutionality of the so-called white slave act.

The ground of the decision in the Lottery case was that Congress has power to prohibit the instrumentalities of interstate commerce from being used for any purpose injurious to the people. It is thus stated by the court (pp. 356-358):

\* \* \* Why may not Congress, invested with the power to regulate commerce among the several States, provide that such commerce shall not be polluted by the carrying of lottery tickets from one State to another? In this connection it must not be forgotten that the power of Congress to regulate commerce among the States is plenary, is complete in itself, and is subject to no limitations except such as may be found in the Constitution. What provision in that instrument can be regarded as limiting the exercise of the power granted? What clause can be cited which, in any degree, countenances the suggestion that one may, of right, carry or cause to be carried from one State to another that which will harm the public morals?

\* \* \* As a State may, for the purpose of guarding the morals of its own people, forbid all sales of lottery tickets within its limits, so Congress, for the purpose of guarding the people of the United States against the "widespread pestilence of lotteries" and to protect the commerce which concerns all the States, may prohibit the carrying of lottery tickets from one State to another. \* \* \* We should hesitate long before adjudging that an evil of such appalling character, carried on through interstate commerce, can

not be met and crushed by the only power competent to that end. We say competent to that end, because Congress alone has the power to occupy, by legislation, the whole field of interstate commerce. (Italics ours.)

To meet the principal objection of its dissenting members, the court undertook to show that lottery tickets are articles of commerce; but whether they are such or not could not have affected the ground of decision. For, as seen above, interstate transportation and its instrumentalities are not less within the control of Congress because that which is transported is not an article of commerce. Likewise, interstate telegraphic communication and its instrumentalities are not less within the control of Congress because the messages do not relate to commerce.

It is thus established by both reason and authority that if wagering upon and manipulating the prices of securities on the exchanges throughout the country may be deemed injurious to the people, on which point argument is unnecessary (*Booth v. Illinois*, 184 U. S., 125; *Otis & Gassman v. Parker*, 187 U. S., 606), Congress has power to prohibit the transmission from one State to another by telegraph or telephone of orders to buy or sell or quotations or other information concerning transactions on those exchanges permitting such abuse of their facilities.

What means, then, may Congress employ to that end? How may it determine what stock exchanges are free from the objectionable practices and therefore at liberty to have orders, quotations, etc., relating to transactions upon them transmitted by telegraph and telephone from one State to another?

From the earlier discussion of the power to exclude matter from the mails, it will have been seen that Congress has the widest choice of means in such cases, and that it may enact that no orders, quotations, etc., relating to transactions on exchanges not submitting to prescribed regulations reasonably adapted to preventing their facilities being used for gambling purposes or to create fictitious prices shall be transmitted by telegraph or telephone from one State to another. On this point the following passage from the opinion in the Lottery case (*supra*) is apposite (p. 358):

If the carrying of lottery tickets from one State to another be interstate commerce, and if Congress is of opinion that an effective regulation for the suppression of lotteries, carried on through such commerce, is to make it a criminal offense to cause lottery tickets to be carried from one State to another, we know of no authority in the courts to hold that the means thus devised are not appropriate and necessary to protect the country at large against a species of interstate commerce which, although in general use and somewhat favored in both National and State legislation in the early history of the country, has grown into disrepute, and has become offensive to the entire people of the Nation.

3. Congress may prohibit national banks from buying, selling, or lending upon the security of stocks or bonds listed on exchanges which permit the use of their facilities for gambling and other purposes detrimental to the public interests.

National-bank corporations are not only liable to be affected in their business, like all other enterprises, by the exercise of the powers of Congress, but in addition are subject to that full measure of control by it, both as to their internal and external affairs, which lawmaking bodies have over corporations of their own creation.

It does not appear that charters granted under the original national banking act of June 3, 1864, were subject to amendment or repeal.

They were limited, however, to 20 years (R. S., sec. 5136); and the acts of July 12, 1882, and April 12, 1902, providing for the extension of the corporate existence of national banks created under the act of June 3, 1864, enact—

That Congress may at any time amend, alter, or repeal this act and the acts of which this is amendatory. (3 Comp. Stat., 3460.)

Doubtless, therefore, the present charters of most national banks are subject to amendment, alteration, or repeal by Congress.

The extent of control over corporations created by it which Congress may exercise under the power to amend, alter, or repeal their charters is thus stated by the Supreme Court in the Sinking Fund cases (99 U. S., 700, 720, 721):

That this power has a limit, no one can doubt. All agree that it can not be used to take away property already acquired under the operation of the charter, or to deprive the corporation of the fruits actually reduced to possession of contracts lawfully made; but as was said by this court, through Mr. Justice Clifford, in *Miller v. The State* (15 Wall., 498, 21 L. ed., 104), "It may safely be affirmed that the reserve power may be exercised, and to almost any extent, to carry into effect the original purposes of the grant, or to secure the due administration of its affairs, so as to protect the rights of stockholders and of creditors, and for the proper disposition of its assets"; and again, in *Holyoke Company v. Lyman* (15 Wall., 519, 21 L. ed., 139), "To protect the rights of the public and of the corporators, or to promote the due administration of the affairs of the corporation." Mr. Justice Field, also speaking for the court, was even more explicit when, in *Tomlinson v. Jessup* (15 Wall., 459, 21 L. ed., 206), he said: "The reservation affects the entire relation between the State and the corporation, and places under legislative control all rights, privileges, and immunities derived by its charter directly from the State"; and again, as late as *R. R. Co. v. Maine* (96 U. S., 510, 24 L. ed., 840), "By the reservation \* \* \* the State retained the power to alter it [the charter] in all particulars constituting the grant to the new company, formed under it, of corporate rights, privileges, and immunities." Mr. Justice Swayne, in *Shields v. Ohio* (95 U. S., 324, L. ed., 359), says, by way of limitation, "The alterations must be reasonable; they must be made in good faith, and be consistent with the object and scope of the act of incorporation. Sheer oppression and wrong can not be inflicted under the guise of amendment or alteration." The rules as here laid down are fully sustained by authority. Further citations are unnecessary.

Giving full effect to the principles which have thus been authoritatively stated, we think it safe to say, that whatever rules Congress might have prescribed in the original charter for the government of the corporation in the administration of its affairs, it retained the power to establish by amendment. In so doing it can not undo what has already been done, and it can not unmake contracts that have already been made, but it may provide for what shall be done in the future.

It follows that under its reserved power to amend, alter, or repeal their charters, Congress may enact that no national bank shall buy or sell or lend money on the security of stocks or bonds listed on exchanges not submitting to regulations necessary in the judgment of Congress to prevent their facilities being used for gambling purposes or to create fictitious prices.

But whether it had reserved the right to alter, amend, or repeal the charters of national banks or not, Congress could restrict or take away altogether any of their powers the continued exercise of which would be inimical to the public interests, leaving undisturbed, of course, rights of property resulting from the past exercise of such powers. (*Pearsall v. Great Northern R. Co.*, 161 U. S., 646; *Louisville & N. R. Co. v. Kentucky*, 161 U. S., 677.) In the last-cited case the Supreme Court said (p. 685):

We regard the issue presented in this case as involving practically the same question. While there is no general reservation clause in the charter of the L. & N. Co., we think, for the reasons stated in the *Pearsall* case, that under its police power the people, in their sovereign capacity, or the legislature as their representatives, may

deal with the charter of a railway corporation, so far as is necessary for the protection of the lives, health, and safety of its passengers or the public, or for the security of property or the conservation of the public interests, provided, of course, that no vested rights are thereby impaired.

The courts would accept the judgment of Congress that it is inimical to the public interests to permit the funds of national banks to be used in buying or making loans upon stocks or bonds dealt in on exchanges on which gambling and manipulation in prices is permitted. (*Powell v. Pennsylvania*, 127 U. S., 678, 685; *Otis & Gassman v. Parker*, 187 U. S., 606.) Therefore, irrespective of any reserved power to alter, amend, or repeal the charters of national banks, Congress may enact that no such bank shall buy or sell or lend money on the security of stocks or bonds listed on exchanges not submitting to prescribed regulations reasonably adapted to preventing their facilities being used for objectionable purposes.

4. *Congress may impose a stamp tax upon sales of stocks and bonds on exchanges which permit the use of their facilities for gambling and other purposes detrimental to the public interests.*

Referring to the taxing power of Congress the Supreme Court in the License Tax cases said (5 Wall., 462, 471):

It is true that the power of Congress to tax is a very extensive power. It is given in the Constitution, with only one exception and only two qualifications. Congress can not tax exports, and it must impose direct taxes by the rule of apportionment, and indirect taxes by the rule of uniformity. Thus limited, and thus only, it reaches every subject, and may be exercised at discretion.

This conception of the power has been repeatedly reaffirmed. (*Pacific Ins. Co. v. Soule*, 7 Wall., 433; *Austin v. Boston*, 7 Wall., 694, 699; *Knowlton v. Moore*, 178 U. S. 41, 58; *McCray v. United States*, 195 U. S., 27, 56.)

The motive or purpose of Congress in imposing a tax can not be inquired into. (*Treat v. White*, 181 U. S., 264, 269; *McCray v. United States*, 195 U. S., 27, 59.)

A stamp tax on sales of corporate stocks and bonds is not a direct tax on property but a duty, impost, or excise, and therefore may be levied by Congress without apportionment according to the census. (*Thomas v. United States*, 192 U. S., 363.)

The only question here therefore is whether, consistently with the requirement of uniformity, Congress may select for taxation sales of corporate stocks on exchanges permitting the use of their facilities for gambling and manipulation in prices, leaving all other such sales unburdened?

It is now settled that the provision of the Constitution that "duties, imposts, and excises shall be uniform throughout the United States," refers to geographical uniformity and is satisfied if the same subject is taxed everywhere throughout the United States and at the same rate and does not require that the tax shall operate precisely in the same manner upon all individuals. (*Knowlton v. Moore*, 178 U. S., 41, 84, 106.)

Applying this doctrine, it was held that in taxing the transmission of property by will Congress may classify the subject according to the degree of blood relationship between the taker and the deceased and impose a different tax in each class, the rate increasing as the relationship grows more distant. And if it could impose a less rate

in one class than in another, for the same reason it could exempt some classes altogether. (*Knowlton v. Moore*, *supra*.)

Similarly, in *McCray v. United States* (195 U. S., 27) an act of Congress classifying oleomargarine into that which is artificially colored in imitation of butter and that which is not and imposing a tax of *ten cents* a pound on the former and *one-fourth of one cent* a pound on the latter was sustained.

If in levying death duties Congress may act upon the principle that there should be less hindrance to transmissions of property to blood relations than to strangers; if in taxing oleomargarine it may act upon the principle that oleomargarine not colored in imitation of butter should be less burdened than that which is, why may it not, in taxing sales of corporate securities, act upon the like principle that there should be less hindrance to sales on exchanges legitimately serving economic ends than to sales on exchanges whose facilities are employed to the public disadvantage?

It will be said that the taxation of sales of stocks in the manner proposed would be an attempt by Congress to suppress stock exchange gambling, and therefore unconstitutional, since that is a subject within the province of the States. The like objection was made that in taxing inheritances at varying rates dependent upon the relationship or absence of relationship between the taker and the deceased Congress was attempting to regulate the disposition of property within the States; and that in taxing oleomargarine 10 cents a pound when colored in imitation of butter and only one-fortieth of that rate when not so colored it was attempting to prohibit the manufacture of artificially-colored oleomargarine within the States in the interest of producers of butter. The answer to this objection has been often stated, nowhere better than in the *Oleomargarine* case (*McCray v. United States*, 195 U. S., 27, 56, 63):

The decisions of this court from the beginning lend no support whatever to the assumption that the judiciary may restrain the exercise of lawful power on the assumption that a wrongful purpose or motive has caused the power to be exerted.

That provision [fifth amendment], as we have previously said, does not withdraw or expressly limit the grant of power to tax conferred upon Congress by the Constitution. From this it follows, as we have also previously declared, that the judiciary is without authority to avoid an act of Congress exerting the taxing power, even in a case where, to the judicial mind, it seems that Congress had, in putting such power in motion, abused its lawful authority by levying a tax which was unwise or oppressive, or the result of the enforcement of which might be to indirectly affect subjects not within the powers delegated to Congress.

It follows that a stamp tax imposed everywhere throughout the United States and at the same rate upon sales of corporate stocks and bonds on exchanges not so organized and governed as to prevent gambling and manipulation of prices does not fail of the uniformity required by the Constitution, because sales of such stocks and bonds otherwise negotiated are not so burdened; and that therefore such a tax is within the power of Congress regardless of its purpose or effect.

Being thus authorized to lay such a tax, it is clear from what has heretofore been said in reference to the means at its disposal in executing its powers, that Congress may enact that exchanges not conforming to prescribed regulations reasonably adapted to suppressing gambling and manipulation in prices shall be deemed not so organized and governed as to prevent the use of their facilities for those purposes.

## CHAPTER THIRD.—AS REGARDS CONCENTRATION OF CONTROL OF MONEY AND CREDIT.

### SECTION 1.—EVOLUTION OF THE CONTROLLING GROUPS.

Your committee is satisfied from the proofs submitted, even in the absence of data from the banks, that there is an established and well-defined identity and community of interest between a few leaders of finance, created and held together through stock ownership, interlocking directorates, partnership and joint account transactions, and other forms of domination over banks, trust companies, railroads, and public-service and industrial corporations, which has resulted in great and rapidly growing concentration of the control of money and credit in the hands of these few men.

The bulk of the oral and documentary evidence taken before your committee was directed toward ascertaining whether, in current phrase, there is a "money trust."

If by such a trust is meant a combination or arrangement created and existing pursuant to a definite agreement between designated persons with the avowed and accomplished object of concentrating unto themselves the control of money and credit, we are unable to say that the existence of a money trust has been established in that broad bald sense of the term, although the committee regrets to find that even adopting that extreme definition surprisingly many of the elements of such a combination exist.

One of the witnesses presented a statement or argument following his examination, from which it appears that he read the charts, statistics, and other testimony produced before the committee, showing among other things the total resources of various financial, railway, and industrial corporations, as intended to imply that all such resources were in the form of actual cash. It was assumed that it would be understood that the resources of railroads include their rails, station equipment, materials, and other assets as well as their cash in hand, and that the resources of industrial corporations include their plants, accounts, and other assets, and those of financial institutions their loans, discounts, and other property and investments. There is no ground for the deduction that the term "resources" as used in the exhibits was not used in the universal acceptance of the word.

It would of course be absurd to suggest that control of the bulk of the widely distributed wealth of a great nation can be corralled by any set of men. If that is what is meant by gentlemen who deny the

existence of a money trust, your committee agrees with them. Such a thing would of course be impossible, and its suggestion is ridiculous. It is not, however, necessary that a group of men shall directly control the small savings in the banks nor the scattered resources of the country in order to monopolize the great financial transactions or to be able to dictate the credits that shall be extended or withheld from the more important and conspicuous business enterprises. This is substantially what has been accomplished and fairly represents the existing condition.

Under our system of issuing and distributing corporate securities the investing public does not buy directly from the corporation. The securities travel from the issuing house through middlemen to the investor. It is only the great banks or bankers with access to the main springs of the concentrated resources made up of other people's money in the banks, trust companies, and life insurance companies, and with control of the machinery for creating markets and distributing securities, who have had the power to underwrite or guarantee the sale of large-scale security issues. The men who through their control over the funds of our railroad and industrial companies are able to direct where such funds shall be kept, and thus to create these great reservoirs of the people's money are the ones who are in position to tap those reservoirs for the ventures in which they are interested and to prevent their being tapped for purposes of which they do not approve. The latter is quite as important a factor as the former. It is a controlling consideration in its effect on competition in the railroad and industrial world.

When we consider, also, in this connection that into these reservoirs of money and credit there flow a large part of the reserves of the banks of the country, that they are also the agents and correspondents of the out-of-town banks in the loaning of their surplus funds in the only public money market of the country, and that a small group of men and their partners and associates have now further strengthened their hold upon the resources of these institutions by acquiring large stock holdings therein, by representation on their boards and through valuable patronage, we begin to realize something of the extent to which this practical and effective domination and control over many of our greatest financial, railroad, and industrial corporations has developed, largely within the past five years, and that it is fraught with peril to the welfare of the country.

If, therefore, by a "money trust" is meant—

An established and well-defined identity and community of interest between a few leaders of finance which has been created and is held together through stock holdings, interlocking directorates, and other forms of domination over banks, trust companies, railroads, public-service and industrial corporations, and which has resulted in a vast and growing concentration of control of money and credit in the hands of a comparatively few men—

your committee, as before stated, has no hesitation in asserting as the result of its investigation up to this time that the condition thus described exists in this country to-day.

Some of the endless ramifications of this power have been traced and presented and it is upon these that we have based our findings. Many others can be fully discovered and analyzed only after a close scrutiny of the internal affairs of the great national banks that will

disclose the ways in which their resources are used, to whom their funds are loaned, what securities they have been buying and selling and how their vast profits have been earned. Whilst your committee has been denied access to this data, sufficient has been learned to reveal the relations of these banks and of the State banks and trust companies and the use that has been made of them in upbuilding a power over our financial system and in consequence over our railroads and greater industries that permits real competition on a large scale in the various fields of enterprise only by sufferance, if at all.

The parties to this combination or understanding or community of interest, by whatever name it may be called, may be conveniently classified, for the purpose of differentiation, into four separate groups.

First. The first, which for convenience of statement we will call the inner group, consists of J. P. Morgan & Co., the recognized leaders, and George F. Baker and James Stillman in their individual capacities and in their joint administration and control of the First National Bank, the National City Bank, the National Bank of Commerce, the Chase National Bank, the Guaranty Trust Co., and the Bankers Trust Co., with total known resources, in these corporations alone, in excess of \$1,300,000,000, and of a number of smaller but important financial institutions. This takes no account of the personal fortunes of these gentlemen.

Second. Closely allied with this inner or primary group, and indeed related to them practically as partners in many of their larger financial enterprises, are the powerful international banking houses of Lee, Higginson & Co. and Kidder, Peabody & Co., with three affiliated banks in Boston—the National Shawmut Bank, the First National Bank, and the Old Colony Trust Co.—having at least more than half of the total resources of all the Boston banks; also with interests and representation in other important New England financial institutions.

Third. In New York City the international banking house of Messrs. Kuhn, Loeb & Co., with its large foreign clientele and connections, whilst only qualifiedly allied with the inner group, and only in isolated transactions, yet through its close relations with the National City Bank and the National Bank of Commerce and other financial institutions with which it has recently allied itself has many interests in common, conducting large joint-account transactions with them, especially in recent years, and having what virtually amounts to an understanding not to compete, which is defended as a principle of "banking ethics." Together they have with a few exceptions pre-empted the banking business of the important railways of the country.

Fourth. In Chicago this inner group associates with and makes issues of securities in joint account or through underwriting participations primarily with the First National Bank and the Illinois Trust & Savings Bank, and has more or less friendly business relations with the Continental & Commercial National Bank, which participates at times in the underwriting of security issues by the inner group. These are the three largest financial institutions in Chicago, with combined resources (including the two affiliated and controlled State institutions of the two national banks) of \$561,000,000.

Radiating from these principal groups and closely affiliated with them are smaller but important banking houses, such as Kissel Kinnicut & Co., White, Weld & Co., and Harvey Fisk & Sons, who

receive large and lucrative patronage from the dominating groups and are used by the latter as jobbers or distributors of securities the issuing of which they control, but which for reasons of their own they prefer not to have issued or distributed under their own names. Messrs. Lee, Higginson & Co., besides being partners with the inner group, are also frequently utilized in this service because of their facilities as distributors of securities.

Beyond these inner groups and subgroups are banks and bankers throughout the country who cooperate with them in underwriting or guaranteeing the sale of securities offered to the public and who also act as distributors of such securities. It was impossible to learn the identity of these corporations, owing to the unwillingness of the members of the inner group to disclose the names of their underwriters, but sufficient appears to justify the statement that there are at least hundreds of them and that they extend into many of the cities throughout this and foreign countries.

The patronage thus proceeding from the inner group and its subgroups is of great value to these banks and bankers, who are thus tied by self-interest to the great issuing houses and may be regarded as a part of this vast financial organization. Such patronage yields no inconsiderable part of the income of these banks and bankers and without much risk on account of the facilities of the principal groups for placing issues of securities through their domination of great banks and trust companies and their other domestic affiliations and their foreign connections. The underwriting commissions on issues made by this inner group are usually easily earned and do not ordinarily involve the underwriters in the purchase of the underwritten securities. Their interest in the transaction is generally adjusted, unless they choose to purchase part of the securities, by the payment to them of a commission. There are however occasions on which this is not the case. The underwriters are then required to take the securities. Bankers and brokers are so anxious to be permitted to participate in these transactions under the lead of the inner group that as a rule they join when invited to do so, regardless of their approval of the particular business, lest by refusing they should thereafter cease to be invited.

It can hardly be expected that the banks, trust companies, and other institutions that are thus seeking participations from this inner group would be likely to engage in business of a character that would be displeasing to the latter or that would interfere with their plans or prestige. And so the protection that can be offered by the members of this inner group constitutes the safest refuge of our great industrial combinations and railroad systems against future competition. The powerful grip of these gentlemen is upon the throttle that controls the wheels of credit and upon their signal those wheels will turn or stop.

In the case of the pending New York subway financing of \$170,000,000 of bonds by Messrs. Morgan & Co. and their associates, Mr. Davison estimated that there were from 100 to 125 such underwriters who were apparently glad to agree that Messrs. Morgan & Co., the First National Bank, and the National City Bank should receive 3 per cent—equal to \$5,100,000—for forming this syndicate, thus relieving themselves from all liability, whilst the underwriters assumed the risk

of what the bonds would realize and of being required to take their share of the unsold portion.

This transaction furnishes a fair illustration of the basis on which this inner group is able to capitalize its financial power. Included among the underwriters are the banks and trust companies that are controlled by Messrs. Morgan, Baker, and Stillman under voting trusts, through stock ownerships, and in the other ways described. Thus, they utilize this control for their own profit and that of the stockholders of the institutions. But the advantage to the depositors whose money and credit may be used in financing such enterprises is not apparent.

It may be that this recently concentrated money power so far has not been abused otherwise than in the possible exaction of excessive profits through absence of competition. Whilst no evidence of abuse has come to the attention of the committee from impartial sources, neither has there been adequate proof or opportunity for proof on the subject. Here again the data has not been available.

Sufficient has, however, been developed to demonstrate that neither potentially competing banking institutions or competing railroad or industrial corporations should be subject to a common source of private control.

Your committee is convinced that however well founded may be the assurances of good intentions by those now holding the places of power which have been thus created, the situation is fraught with too great peril to our institutions to be tolerated.

#### SECTION 2.—CONTROL OF MARKET FOR SECURITY ISSUES.

Through their power and domination over so many of the largest financial institutions, which, as buyers, underwriters, distributors, or investors, constitute the principal first outlets for security issues, the inner group and its allies have drawn to themselves the bulk of the business of marketing the issues of the greater railroad, producing and trading, and public-utility corporations, which, in consequence, have no open market to which to appeal; and from this position of vantage, fortified by the control exerted by them through voting trusts, representation in directorates, stock holdings, fiscal agencies, and other relations, they have been able in turn to direct the deposits and other patronage of such corporations to these same financial institutions, thereby strengthening the instruments through which they work.

No railroad system or industrial corporation for which either of the houses named has acted as banker could shift its business from one to another. Where one has made an issue of securities for a corporation the others will not bid for subsequent issues of the same corporation. Their frequent and extensive relations in the joint issue of securities has made such a *modus vivendi* inevitable.

This inner group and allies thus have no effective competition, either from others or amongst themselves for these large security issues, and are accordingly free to exact their own terms in most cases. Your committee has no evidence that this power is being used oppressively and no means of ascertaining the facts so long as their profits are undisclosed.

It should be noted, however, that issues of subsidiaries of the United States Steel Corporation within the past year, amounting to \$30,500,000 having been purchased by Messrs. Morgan & Co., were, the greater part of them, immediately resold at a profit to Lee, Higginson & Co. and Kissel, Kinnicut & Co. (Davison, R., 1833-1848), when, so far as appears, the corporation could readily have saved this intermediate profit or commission by being permitted to deal directly with the banking houses which purchased the securities for distribution. It is admitted that Messrs. Morgan reaped a profit on these issues. Yet they performed no service so far as we have yet been able to learn. They neither formed the syndicate nor did they lend their names to the issue. If they wanted to market the securities we assume that it was their privilege to do so, as fiscal agents of the corporation. Otherwise, was it not their duty, situated as they were with regard to the Steel Corporation, as the supreme power therein, without whose approval no director could be named, to see to it that the best possible bargain for the corporation should be made, and not reserve to themselves a profit without risk or service? There are said to be about 130,000 shareholders in the Steel Corporation. This illustrates the vice of allowing interstate corporations to constitute exclusive fiscal agencies, which secure large revenues without performing any substantial service, and which, above all, render the corporations in question powerless to profit by competition. When we consider further that in many cases the corporation is not a free agent in thus destroying its liberty of action the practice becomes intolerable.

Again, to take one of several similar instances, it was impossible for your committee to learn whether the prices at which Messrs. Morgan & Co. and the First National Bank have from time to time purchased the securities of the Southern Railway (the management of which they absolutely control through the voting trust referred to) represented the fair value thereof. Assuming that in this case full value was paid, your committee is of the opinion that a banking house should not occupy a position where it can determine the prices at which a corporation shall sell security issues to it. It is a trustee for the disfranchised stockholders in as broad and unqualified a sense as is a guardian for his infant ward and should be under the same disability against dealing with its *cestui que trust*. The same principle is applicable with respect to the trust companies with which Messrs. Morgan and Baker stand in like relation under voting trusts and which participate in their ventures as underwriters and purchasers of securities.

The suggestion that because these corporations have boards of directors composed of men of standing they are independent, seems to us disingenuous. They are the nominees of the banking house and subject to removal by it at any election. They are not accountable to the shareholders, but to Messrs. Morgan and Baker, and are not free agents, no matter how eminently respectable and distinguished they may be.

Not only does this domination of great banks and trust companies enable the inner group and their allies to control the disposition of new security issues through control of the main outlets therefor, but it also enables them to say what and whose securities shall not be bought and of enforcing the retention in these institutions of securi-

ties issued by them of which an independent management might consider it wise to dispose. The large holdings of the Mutual and Equitable Life Insurance Cos. of the stocks of the National Bank of Commerce and of trust companies and of certain industrial companies with which Messrs. Morgan and the National City Bank are identified, such as those of the Consolidated Gas Co. and the International Mercantile Marine Co., are a few of the numerous instances of this kind. The New York Insurance law of 1906 allowed five years for the disposition of this class of securities. This has now been extended for a further term of five years. Yet most of these securities have a ready market.

The purchase of the Equitable Life stock by Mr. Ryan and Mr. Morgan in succession furnishes an object lesson of the value that leading financiers place on the control of corporate assets not belonging to the corporation but held in trust for other people, and a fair criterion from which to judge of the reasons why they have engaged so actively in buying into banks and trust companies and in securing control thereof through voting trusts. If the controlling stock of the Equitable Life, that yields only 7 per cent on \$51,000—\$3,570 per year—was worth \$2,500,000 to Mr. Ryan and \$3,000,000 to Mr. Morgan, why did it have that value? Was it because the life insurance company held in its treasury the majority stock of the Mercantile Trust Co., which was turned over to the Bankers Trust Co., controlled by J. P. Morgan & Co. through a voting trust, after Mr. Morgan bought Mr. Ryan's stock; and also the stocks of other banks and trust companies, including those of the National Bank of Commerce and the Fifth Avenue Trust Co.? The Guaranty Trust Co., likewise controlled by Morgan & Co., through a voting trust, subsequently absorbed the Fifth Avenue Trust Co., and Messrs. Morgan, Baker, and Stillman took over one-half the holdings of the Equitable and Mutual Life Insurance Cos. of the Bank of Commerce stock.

Here, then, were stocks of five important trust companies and one of our largest national banks in New York City that had been held by these two life insurance companies. Within five years all of these stocks, so far as distributed by the insurance companies, have found their way into the hands of the men who virtually controlled or were identified with the management of the insurance companies or of their close allies and associates, to that extent thus further entrenching them.

The distinction between buying control of a bank or trust company and of an industrial company or railroad is fundamental. In the latter cases the purchaser gets only the use of the assets that belong to the corporation. In the former he bargains for and gets the use of other people's money. The change of control in the latter interests only the parties to the transaction. It does not concern the public. In the former case the depositors and the public are very much interested, as must be apparent when we consider the effect of the acquisition of these bank and trust company stocks in connection with the purchases by these gentlemen of stocks in other of the great New York institutions at about that time and coincident with the establishment and renewal of voting trusts in still others.

SECTION 3.—CONCENTRATION OF CONTROL OF MONEY AND CREDIT ADMITTED.

That a rapid concentration of the sources of credit in the forms we have described has taken place in this country in very recent years was admitted by witnesses of the highest qualifications.

Mr. Morgan, however, was not one of these. He said (R., 1051, 1052):

Q. There is no way one man can get a monopoly of money?

A. Or control of it.

Q. He can make a try at it?

A. No, sir; he can not. He may have all the money in Christendom, but he can not do it.

Q. Let us go on. If you owned all the banks of New York, with all their resources, would you not come pretty near having a control of credit?

A. No, sir; not at all.

\* \* \* What I mean to say is this—allow me: The question of control, in this country, at least, is personal; that is, in money.

Q. How about credit?

A. In credit also.

Q. Personal to whom—to the man who controls?

A. No, no; he never has it; he can not buy it.

Q. No; but he gets—

A. All the money in Christendom and all the banks in Christendom can not control it.

Q. That is what you wanted to say, is it not?

A. Yes, sir.

And again (R., 1082, 1083, 1084, 1085):

Q. If you had the control of all that represents the assets in the banks of New York you would have the control of money—of all that money?

A. No; you would not.

\* \* \* But money can not be controlled.

Q. Is not the credit based upon the money?

A. No, sir.

Q. It has no relation?

A. No, sir.

Q. None whatever?

A. No, sir; none whatever.

\* \* \* Q. Commercial credits are based upon the possession of money or property?

A. What?

Q. Commercial credits?

A. Money or property or character.

Q. Is not commercial credit based primarily upon money or property?

A. No, sir; the first thing is character.

Q. Before money or property?

A. Before money or anything else. Money can not buy it.

Q. So that a man with character, without anything at all behind it can get all the credit he wants, and a man with the property can not get it?

A. That is very often the case.

Q. But that is the rule of business?

A. That is the rule of business, sir.

\* \* \* Q. Do you mean to say that when people lend, as when loans are made on stock-exchange collateral, to the extent of hundreds of millions of dollars, they look to anything except the collateral?

A. Yes; they do.

Q. They do?

A. Yes. Right on that point, what I did, what I used to do—and I think it is pretty generally done now—is this: If I see there is a loan to Mr. Smith, I say,

"You call that loan right away." I would not have that loan in the box. I would not have that loan.

Q. That is not the way money is loaned on the stock exchange?

A. That is the way I loan it.

Q. No matter what collateral a man has on the stock exchange—

A. If he is not satisfactory to me, I call the loan at once, personally.

Q. I am not talking about you, personally.

A. I call that loan personally. I am not talking of anybody else's way of doing business, but I tell you what I think is the basis of business.

None of the other witnesses who were interrogated on this subject were able to agree with Mr. Morgan as to the factors that enter into the current business of loaning money on collateral. Thus Mr. Baker said (R., 1503):

Q. As a matter of fact, Mr. Baker, in the current loans made on stock-exchange collateral, does not the bank look to the security and not to the borrower?

A. Generally.

It is thus seen that Mr. Morgan's view that group control of credit is impossible, rests upon the theory that credit is not based on money or resources, but wholly on character, and this even as regards loans on the stock exchange. This is an obvious economic fallacy, as the every-day transactions of business demonstrates.

Following out this theory, Mr. Morgan further stated that he was not conscious that he had the slightest power (R., 1061):

Q. Your power in any direction is entirely unconscious to you, is it not?

A. It is, sir; if that is the case.

Q. You do not think you have any power in any department of industry in this country, do you?

A. I do not.

Q. Not the slightest?

A. Not the slightest.

This again illustrates that Mr. Morgan's conception of what constitutes power and control in the financial world is so peculiar as to invalidate all his conclusions based upon it.

It seems to your committee that among other things his testimony as to the circumstances under which he obtained control of the Equitable Life Assurance Co. from Mr. Ryan demonstrates his possession of power in the fullest sense, and also that he knows how to exercise it. He said (R., 1069, 1070):

Q. \* \* \* Did Mr. Ryan offer this stock to you?

A. I asked him to sell it to me.

Q. You asked him to sell it to you?

A. Yes.

Q. Did you tell him why you wanted it?

A. No; I told him I thought it was a good thing for me to have.

Q. Did he tell you that he wanted to sell it?

A. No; but he sold it.

Q. He did not want to sell it; but when you said you wanted it, he sold it?

A. He did not say that he did not want to sell it.

Q. What did he say when you told him you would like to have it and thought you ought to have it?

A. He hesitated about it, and finally sold it.

It will be noted that the only reason that Mr. Morgan gave for Mr. Ryan's surrender of the stock was that he told Mr. Ryan that he "thought it was a good thing" for him (Mr. Morgan) to have. (R., 1069.)

It may be that behind the reluctance of Mr. Morgan to furnish a business or other reason for this transaction lies a hidden motive, based on a high disinterested sense of public duty. If so, we have been unable to discover it. The incident is cited here primarily to show that however he may feel about it himself, the dominating power of Mr. Morgan is so universally recognized in the financial world that even the leaders humbly bow to it.

Again, Mr. Morgan's conceptions of the duty of a bank director with regard to the knowledge a director is entitled to secure and is required to possess as to loans made by his bank demonstrates that his views on these questions are peculiar to himself and represent neither the generally understood point nor do they correctly state the legal obligation resting on a director (R., 1090, 1091):

Q. You do not think a director has a right to look at the loans in his bank?

A. In the aggregate stocks, but not as to whose they are.

Q. You do not think the director of a corporation has a right to find out to whom the bank lends its money?

A. Yes; to whom they loan, but not to examine it for that purpose.

Q. They have a right to see to whom they loan their money and on what collateral, have they not?

A. Yes; in blank.

Q. They would not be allowed to know the name?

A. No, sir.

On the proposition that there is not and can not be concentration of control of money or credit, it will be observed that Mr. Morgan is directly at variance with his associate, Mr. Baker, who deprecated further concentration in this regard, saying it has gone far enough, because in the hands of the wrong men "it would be very bad"; that the safety of the situation lies in the personnel of the control. (R., 1567, 1568.) He evidently does not agree that the situation would correct itself.

That such concentration is an existing condition and not a myth seems indeed to be agreed on all sides. Mr. Reynolds considers it a menace (R., 1654, 1655), whilst Mr. Schiff has been an interested observer of its rapid growth during the past few years, but is not worried, because his firm is now so rich and powerful that it no longer requires credit (R., 1686, 1688). We note, however, that he has been something more than a mere observer. His firm has acquired also within the past few years interests and representation in the National Bank of Commerce, Equitable Trust Co., United States Mortgage & Trust Co., and Fourth National Bank. (Exhibit 200, R., 1696, 1765.)

Mr. Perkins said he had also observed the growth of concentration. (R., 1635.)

#### SECTION 4.—INTERLOCKING DIRECTORATES AND CONSOLIDATIONS.

From the point of view of the champions of monopoly and combination, which they are pleased to characterize as "cooperation," the situation as regards the leading banks and trust companies in the cities of New York, Boston, and Chicago (there was not time to complete the inquiry as to Philadelphia, St. Louis, and other large cities) is logical and desirable. But to those who believe in the gov-

ernmental policy of maintaining or restoring competition, as reflected in the Federal and State laws, the condition is anomalous and of the most serious import. Its highest development is found in New York City. The situation there is the one with which we have primarily to deal, although other cities play an important part in the general scheme. It is through the control of the leading New York institutions and their commanding position as the depositaries of the reserves of the country and by reason of the fact that the New York Stock Exchange is the only public money market in the United States, that the money rates and the market for securities as affected by the money rates can be controlled.

The evidence demonstrates that the inner group and the banks and trust companies with which they are affiliated, through stock ownership, representation in directorates, and otherwise, dominate the money market for loans on the stock exchange and on stock-exchange securities. They lend not only their own money and the money of their depositors, including the deposits of the out-of-town banks, but that of their correspondents, on terms and security satisfactory to them (the New York banks). It is in their power by cooperation primarily to fix the call rate from day to day and to determine what constitutes satisfactory collateral. This does not mean that all the loans thus made are controlled by them. Nor does it mean that loans may not be effected by other banks and bankers on collateral that the banks affiliated with the inner group would not accept. Such a degree of absolute domination is not necessary in order to control money rates or to influence security values, any more than it would be necessary for one corporation to own all of a given commodity in order to be able to control the price. Nor does the proof show affirmatively that there is in fact any definite agreement or understanding pursuant to which the daily call rates for money are fixed. But the power and the opportunity are there and could be exercised without leaving proof or trace behind.

Whenever the incentive is at hand the machinery is ready. It is made possible by this community of interest and family representation in the institutions that hold these resources. At best it is a dangerous situation, with its boundless temptations and opportunities, no matter how high or lofty may be the sense of responsibility of those who hold the power. It is too vast and perilous a power to be safely intrusted to the hands of any man or set of men, be he or they ever so patriotic or unselfish. We have no right to assume that he or they or their successors will never use it in his or their own interest and to the detriment of the public welfare.

We do not agree to the cheerful philosophy that such a situation will right itself and that when the man thus intrusted with this great power ceases to deserve it he will lose it; or, as Mr. Morgan put it, that deposits will be withdrawn from his banks. What if they are held there buttressed by voting trusts, fiscal-agency agreements, directorships, stock holdings, and in the many other ways known only to the intricacies of modern finance? What if they finally do escape and the impossible should come about of his power being broken?

At best it would require open, reckless, and long-continued abuse to cripple power thus intrenched. It could withstand many missteps even if they became known, which is quite unlikely. And

after he was crippled he would revive. If in the end the power should be destroyed, what is likely to happen to the credit and prosperity of the country whilst the edifice is crumbling?

That argument does not appeal to us as an answer to the conclusion we have reached that such power is a menace.

To us the peril is manifest. But the remedy is not so easily found or applied, having due regard, as we should, to the encouragement of enterprise.

As the first and foremost step in applying a remedy, and also for reasons that seem to us conclusive, independently of that consideration, we recommend that interlocking directorates in potentially competing financial institutions be abolished and prohibited, so far as lies in the power of Congress to bring about that result, with the qualification that a director of a national bank or a partner of his may be an officer or a director of not more than one trust company doing business at the same place. Whilst Congress can not intrude into the management of State banks and trust companies, it is clearly within its province to disqualify any person who is an officer or director of either a State bank or trust company or a partner of such officer or director from being an officer or director in a national bank that is located in the same city or town. And, of course, Congress has power to prohibit an officer or director of one national bank from being an officer or director of a State institution in the same locality.

It is manifestly improper and repugnant to the theory and practice of competition that the same person or members of the same firm shall undertake to act in such inconsistent capacities. The exception in the case of a trust company is suggested, because of the different character of business that may be transacted by the latter. Nor is it just to the stockholders or depositors of either institution that an officer or director of a national bank should essay to serve two masters whose interests should be so divergent. When we find, as in a number of instances, the same man a director in a half dozen or more banks and trust companies all located in the same section of the same city, doing the same class of business and with a like set of associates similarly situated all belonging to the same group and representing the same class of interests, all further pretense of competition is useless. For all practical purposes of competition such banks and trust companies may as well be consolidated into a single entity.

Mr. Davison has, in fact, admitted that as to the Guaranty Trust Co. the purpose of himself and his associates in acquiring it was to consolidate it with the Bankers Trust Co., which they had organized and also controlled. So in the case of the National Bank of Commerce, very large blocks of the stock of which were acquired by J. P. Morgan & Co., and those in control of the National City Bank and the First National Bank, the purpose was doubtless much the same. That being so, they should not be permitted to pose as competitors.

If banks serving in the same field are to be permitted to have common directors, genuine competition will be rendered impossible. Besides, this practice gives to such common directors the unfair advantage of knowing the affairs of borrowers in various banks, and thus affords endless opportunities for oppression.

The contention that if banks in the same community were not allowed to have officers and directors in common competent men for

the places could not be had and that in consequence the patronage and prosperity of the banks would be injuriously affected, is disproved by the case of the Continental & Commercial National Bank of Chicago. Its president, Mr. Reynolds, testified as follows (R., 1655):

Q. Do you approve of the identity of directors or interlocking directors in potentially competing institutions?

A. No, sir; personally I do not believe that is the best policy. That is the reason I am not a director or a stockholder in any corporation that deals with us. There is hardly a day that I am not invited and do not have the opportunity to do it. It has been my theory of the proper method of banking to adhere to that policy.

Q. You have found that you could succeed in that way, too, have you not, Mr. Reynolds?

A. That is true as to whatever we have done. Some people would say that we have been successful. I am a little modest in that direction.

Q. Have you not the largest deposits in the country?

A. With one exception, at any rate; yes.

The omission of the banking law to limit the number of directors has led to boards of unwieldy size and has scattered responsibility where it should be concentrated. The National City Bank of New York, for instance, has 24; the National Bank of Commerce of New York has 40. The consensus of opinion among financiers is that small boards would be more effective (Reynolds, R., 1640 1641; Schiff, R., 1686; Davison, R., 1870, 1871). Such an arrangement would leave no ground for the objection that has been urged against abolishing interlocking directorates, that not enough competent men would be available.

It does not appear and it is not the fact, so far as we have been able to learn, that either in England or France or in any other country is there any community of interest between the great institutions or any interlocking of directorates. They are competitive in every sense of the word. Still more important is the fact that the law jealously safeguards them against the participation of bankers and brokers in their councils, on the ground that as those interests are likely to be dealing with the banks they should not be permitted to be represented on both sides of the bargain.

The laws on that subject are as follows:

*Bank of England.*—Bankers, brokers, bill discounters, or directors of other banks operating in England are excluded as directors. (S. Doc. 405, p. 10.) Custom has enacted that the directors should never be chosen from the ranks of other banks. They are generally taken from the merchant firms and accepting houses. (S. Doc. 492, p. 67.)

*Bank of France.*—Regents (directors) are chosen only from the commercial and industrial classes. The consulting discount committee is composed of 12 merchants and manufacturers. (S. Doc. 405, p. 190.)

*National Bank of Belgium.*—The governors and directors can not be on the board of any other bank. (S. Doc. 400, p. 227.)

*Russian banking law.*—No person is allowed to be a member of the board of management of more than one bank. (S. Doc. 586, p. 16.)

*Union Bank of Scotland.*—No banker or stockholder is eligible as a director. (S. Doc. 405, p. 158.)

*Commercial Bank of Scotland.*—Directors must not be directors of any other bank. (S. Doc. 405, p. 174.)

If we can get back to anywhere near the state of healthful rivalry that prevails in those countries our troubles in this direction will be solved.

Your committee is of opinion, therefore, that no person should be permitted to be a director in potentially competitive financial institutions, with the qualifications above stated or in competitive industrial, railroad, or other corporations and that the right of a national bank to acquire or merge with or consolidate with other financial institutions should be subject to governmental authority, preferably the Comptroller of the Currency, to the end that it may be restricted and controlled and that the rapid disappearance of competition may be checked and competition revived. Under the national banking act there is now no limitation on the power of national banks to consolidate. They may combine to the point of complete monopoly.

#### SECTION 5.—VOTING TRUSTS IN FINANCIAL INSTITUTIONS.

No evidence of the existence of such voting trusts in national banks has been brought to our attention unless the arrangements referred to between security companies and national banks requiring that every purchase or sale of bank stock shall be made in conjunction with a proportionate interest in the security company, which may be regarded as in a sense in the nature of a modified voting trust to the extent that it interferes with the freedom of disposition of bank stock.

We regard the existence of voting trusts in financial institutions as highly inadvisable and prejudicial. The directors of a corporation that is authorized to receive deposits should be accountable for the management of their institution directly to the owners and to the public. Their tenure of office should not be dependent on strangers in interest. The stockholders should not have the right to delegate any such duty. They, too, are in a sense trustees for the depositors and for the public, which is deeply concerned in maintaining the integrity of its financial system.

The turning over of such control to those who are constantly dealing with the institution is particularly inappropriate and undesirable no matter how well intentioned may be the trustees. It may be assumed that in the two conspicuous cases that were brought to our attention the prosperity of the companies has been vastly promoted by that action, as we have no doubt it has been. We still regard the action in that respect and the result as unfortunate from the point of view of the public interest. It was doubtless because of the power of Messrs. Morgan and Baker that it was made possible.

We recommend that it be expressly declared unlawful for the controlling interest or any part of the stock of a national bank to be dealt with in that way. The action in respect of the trust companies in question is not within our province, but we venture to express the hope and expectation that the voting trusts in which their stock is held will be dissolved.

## SECTION 6.—MINORITY REPRESENTATION THROUGH CUMULATIVE VOTING.

Your committee believes that the minority should have the right to representation on the boards of directors of all corporations in the proportion of their interests. The proposition appeals to one as a common measure of rudimentary justice. It meets with the approval of most of the bankers and others who have been interrogated on the subject. It prevails in many of the States. No sufficient reason has been urged against it.

One witness argued that it would make place on boards of directors for mischief-makers and other undesirables who might want to use advance information for stockjobbing or other improper purposes. The suggestion that a man who either alone or in conjunction with other stockholders can command sufficient pecuniary interest in a corporation to secure representation may take office in order to injure or betray his own interests is no more applicable to a minority than to a majority. The latter have been known to do so. The experience of directors in the control of a corporation using advance information as a private asset for speculative purposes is no novelty. A minority will not have the power to stop altogether but it may be able to check the use of the corporation by the majority for selfish or ulterior purposes.

Great as have been the abuses practiced upon the public by the manipulation of *securities* through the medium of the stock exchange, they do not in our judgment compare with the frauds that are practiced upon minority stockholders by the *manipulation of properties* by the holders of bare majorities through holding companies and in many other ways in which minorities may be oppressed under the system of excluding them from all representation. It frequently amounts to virtual confiscation. This is especially true in railroad properties, where the controlled company becomes a mere pawn in the game of the controlling company.

National banks should be required to afford minority representation, as should all other corporations created by Congress. The securities of corporations that do not afford this measure of justice and protection are not safe or proper to be made the basis of loans by the banks. By forbidding national banks from lending upon them Congress can do its part toward adding to the public safety in corporate investments.

Other countries have gone much further than is here suggested, and much further than we would recommend, to keep control of the banks out of the hands of large stockholders. Their laws render it impossible for such holders to dominate the corporation, even though they constitute the vast majority in ownership. Their effort is to force the control into the hands of the greatest number of small scattered holders as against the majority of stock interest in the hands of the smaller number of holders.

The following table on this point is illuminating:

# 144 CONCLUSIONS AS TO CONCENTRATION OF CONTROL, ETC.

Name of bank.	Limitation.	Reference to authority.
Bank of England.....	Each stockholder owning £500 stock or more has but 1 vote, regardless of the amount of his holding.	S. Doc. No. 405, p. 8.
Union of London and Smith's Bank (England).	No corporation can hold stock. No transfer can be made except with consent of directors, who would refuse consent to transfer on part of any one to get too large holding. Each 10 shares up to 200 has 1 vote, but no holder, regardless of amount owned, has over 20 votes.	S. Doc. No. 405, p. 35.
London and Westminster Bank (England).	Holder of 10 to 49 shares has 1 vote; of 50 to 99 shares, 2 votes; of 100 to 199 shares, 3 votes; of 200 shares or over 4 votes.	S. Doc. No. 405, p. 116.
Bank of Scotland.....	1 vote for every £250 (5 shares), but not more than 20 votes, regardless of amount owned.	S. Doc. No. 405, p. 143.
Union Bank of Scotland.....	1 vote for 10 shares, 2 votes for 50 shares, 3 votes for 100 shares, and 1 vote for every 100 shares over 100.	S. Doc. No. 405, p. 158.
Commercial Bank of Scotland	5 shares gives 1 vote; 10 shares, 2 votes; 15 shares, 3 votes; 20 shares, 4 votes; 25 shares, 5 votes; 35 shares, 6 votes; 45 shares, 7 votes; 55 shares, 8 votes; 65 shares, 9 votes; 80 shares, 10 votes; 95 shares, 11 votes; 110 shares, 12 votes; 130 shares, 13 votes; 150 shares, 14 votes; 175 shares, 15 votes; 200 shares, 16 votes, which is the maximum vote.	S. Doc. No. 405, p. 173.
National Bank of Belgium...	10 shares gives right to 1 vote. No one can have more than 5 votes as shareholder and 5 votes as attorney for others whatever may be the number of his principals.	S. Doc. No. 400, p. 234.
Bank of the Netherlands.....	1 vote for 5 shares and 1 vote for each additional 10 shares.	S. Doc. No. 586, p. 47.
Russian banking law.....	No shareholder shall have a voting power exceeding one-tenth of the aggregate number of votes of members present at general stockholders' meetings.	S. Doc. No. 586, p. 17.

The holdings in all these countries are widely scattered:

Name of bank.	Number of shares.	Number of holders.	Reference to authority.
England:			
Bank of England.....	145,530	11,986	S. Doc. No. 578, p. 37.
Barclays.....	80,000	4,800	Do.
Capital and Counties.....	87,500	9,200	Do.
Lloyds.....	221,580	20,000	Do.
London & County.....	80,000	11,800	Do.
London Joint Stock.....	120,000	5,388	Do.
London & Southwestern.....	25,000	4,709	Do.
London & Midland.....	150,800	14,140	Do.
London & Westminster.....	140,000	10,521	Do.
Metropolitan.....	50,000	2,700	Do.
National Provincial.....	159,000	16,632	Do.
Parrs.....	85,430	8,122	Do.
William Deacons.....	78,130	2,900	Do.
Union of London.....	229,340	8,700	Do.
Deutsche Bank.....	The larger part of its shares are held in lots of 1 to 3 shares.		S. Doc. No. 405, p. 37.
Bank of France.....	182,500	32,867	Bankers' Magazine for London, Aug., 1912.
Reichsbank.....	100,000	18,757	Do.
National Bank of Belgium.....	50,000	1,888	S. Doc. No. 400, p. 217.

## SECTION 7.—FISCAL-AGENCY AGREEMENTS.

Interstate corporations should not be permitted to enter into any agreements or other arrangements constituting any bank, banker, or trust company their sole fiscal agent to dispose of their security issues. Such arrangements make competition for their issues impossible.

Your committee is especially impressed with the impropriety of existing business practices that permit members of banking houses to sit on the boards and executive committees of interstate corpora-

tions with which they are dealing in the purchase and sale of securities or on the boards of directors and executive committees of banks that are underwriting or buying securities issued by such banking houses.

#### SECTION 8.—PRIVATE BANKERS AS DEPOSITARIES.

As heretofore stated, your committee has been unable to secure a complete list of the names of interstate corporations that are depositors with Morgan & Co. and other private bankers. It is fair to assume, however, that among them are all or most of those controlled by that firm through existing or expired voting trusts or otherwise.

Whilst we are satisfied that this particular firm is fully able to respond to all demands made upon it by its depositors, the question is as to the underlying principle of permitting deposits with private bankers, which we think should not be allowed. They are subject to no investigation, their resources and liabilities are unknown, they are required to keep no reserves, and may invest their depositors' money as they see fit.

Of the \$114,000,000 of funds that were on deposit with Messrs. J. P. Morgan & Co. on November 1, 1912 (exclusive of \$49,000,000 of deposits of their Philadelphia branch of Drexel & Co. held in like manner) they had on deposit in all their banks of deposit an aggregate sum of \$12,094,000, which presumably included all their own funds. (Ex. 154, R. 1339; Ex. 220, R. 1949.)

A very natural result of permitting interstate corporations to deposit their moneys in this way is to put the cash reserves of these corporations at the service of the bankers. Unlike the usual relations between a bank and its customers, the bankers here have, as we have seen, the power to determine, through the board of directors, on which they are generally represented and all of whom they name in some cases, what the fiscal policy of the company shall be, what balances it shall keep, when it shall withdraw them, its money requirements, how they shall be met, what issues of securities it shall make, at what times and on what terms, and all of the many financial problems incident to the management of these great and complex corporate enterprises.

It is not necessary to question the good faith or fair dealing of the bankers in their relations with these controlled corporations in order to realize the impropriety of permitting this condition to continue unchecked and without supervision. The ownership of these corporations is widely scattered. Their stockholders include millions of small investors who are unable to protect themselves and who know, in fact, nothing of the management or operations of the companies except from the reports of the management.

#### SECTION 9.—INDIFFERENCE OF STOCKHOLDERS AN AID TO CONCENTRATION.

It appears from the evidence that where the property is not held under a voting trust and where the stock has its voting rights a small fraction is able to control a corporation if the holdings are

146 CONCLUSIONS AS TO CONCENTRATION OF CONTROL, ETC.

widely scattered, and that this is due mainly to the supineness and absence of initiative of stockholders in protecting their interests.

Unlike other countries, this condition is proverbial with us. None of the witnesses called was able to name an instance in the history of the country in which the stockholders had succeeded in overthrowing an existing management in any large corporation, nor does it appear that stockholders have ever even succeeded in so far as to secure the investigation of an existing management of a corporation to ascertain whether it has been well or honestly managed.

In this connection the officers of the four great life insurance companies were called and extracts from the minutes of their meetings of policyholders were produced, with the following results:

New York Life Insurance Co. (testimony of Mr. McCall, R., pp. 1306, 1307, 1308):

Year.	Number of policyholders.	Number of votes cast by policyholders.
1908.....	About 900,000.....	62
1909.....	Between 900,000 and 1,000,000.....	32
1911.....	About the same.....	41

Mutual Life Insurance Co. (testimony of Mr. Peabody, R., pp. 1312, 1313):

Year.	Number of policyholders.	Number of votes cast by policyholders.	Remarks.
1908.....	About 600,000.....	93	Contested election.
1909.....	do.....	130	
1911.....	Between 600,000 and 700,000.....	13,527	

Equitable Life Assurance Society (testimony of Mr. Day, R., pp. 1322, 1323):

This company has about 500,000 policyholders; approximately 25 to 50 vote at annual elections; the agency force is about 5,000. As the result of extraordinary efforts to get out a vote, they sent out 500,000 requests for votes, with stamped envelopes for reply, and in response received 22,000 votes.

Metropolitan Life Insurance Co. (testimony of Messrs. Ecker and Woodward, R., pp. 1336, 1337, 1338):

Year.	Number of policyholders.	Number of votes cast by policyholders.	Remarks.
1910.....	13,000,000 policies held by between 8,000,000 and 9,000,000 holders.	8,677	Agency force is about 10,000; district superintendents to the number of about 350 were instructed to endeavor to get out the votes.
1911.....	About the same.....	<sup>1</sup> 28,607	
1912.....	do.....	<sup>1</sup> 83,986	

<sup>1</sup> This indicates the number of votes cast for the president, Mr. Hegeman, who received the largest number of votes.

Except as to the Metropolitan Life, the officers were unable to say whether the few voting policyholders were made up of employees in the building. As the result of unusual efforts in the Metropolitan

Life to get out the vote in 1910 the 10,000 agents of the company were enlisted in the cause. As the outcome of their combined labor less than 1 per cent of the vote was secured, and that was in effect an agency vote, and as such presumably controlled by the management and secured at its solicitation, and in no true sense a policyholders' vote. (R., 1337-1339.) In 1910, when there was a contest in the Mutual Life, the vote was gotten out through the agents. (R., 1313.)

All of which demonstrates that the so-called control of life insurance companies by policyholders through mutualization is a farce and that its only result is to keep in office a self-constituted, self-perpetuating management, which can usually rely on the agency force to more than offset a policyholders' uprising if such a thing is conceivable. It is because of this condition that your committee attaches importance to the control of the Equitable Life Assurance Society by Mr. Morgan and to the relations of Mr. Baker to the management of the Mutual Life Insurance Co. as bearing on their influence over the \$1,091,000,000 of assets of those companies. For that purpose there has been introduced in evidence a list of the investments of those companies, from which it will be seen that they consist largely of securities of companies with which Messrs. Morgan and Baker are identified. This, however, is mainly normal and is not subject to criticism except as to isolated investments, as it would be difficult to find securities of a class which a life insurance company should hold with which these gentlemen are not identified.

The situation that exists with respect to the control of the so-called mutual companies is in a modified way illustrative of all great corporations with numerous and widely scattered stockholders. The management is virtually self-perpetuating and is able through the power of patronage, the indifference of stockholders and other influences to control a majority of the stock. This means that where representatives of a great banking house are on the board and are financing the corporation and in close relations with the management the policy of the corporation is largely determined by the bankers where they choose to assume that responsibility. They may name the officers and directors and they buy and sell their securities without competition on terms that they think fair. The effect of such a system manifestly assures to the bankers a relation that they should not bear and power that they are not entitled to wield over other people's money and property in the determination of questions and policies as to which they sit on both sides of the table.

#### SECTION 10.—DOMINATION OF RAILROAD SYSTEMS BY INNER GROUP.

Your committee finds that vast systems of railroads in various parts of the country are in effect subject to the control of this inner group, a situation not conducive to genuine competition.

Here again the Southern Railway offers the most convenient illustration. For 19 years it has been controlled by Messrs. Morgan and Baker under a voting trust. They still control it. During all that time the road has never paid a dividend on its common stock, although it does not appear, and we do not mean to imply, that this is due to any fault of the voting trustees. It operates in competition with

the Louisville & Nashville and with the Atlantic Coast Line Railroads. While under such control Messrs. Morgan & Co. purchased the Louisville & Nashville and turned it over to the Atlantic Coast Line, thus strengthening the latter against the competitor for whose stockholders Messrs. Morgan and Baker were acting as trustees, and whose properties were in their hands.

During this same time, while Messrs. Morgan & Co. had been financing the requirements of the Southern Railway, they have also been financing those of its competitor. It may be, as Mr. Davison states, that it is entirely consistent and wholesome that a banking house shall gain the influence over competitors that arises from financing their respective money requirements, especially in a situation such as now exists where, having once become the bankers for a given corporation, that corporation can not finance its needs with any other leading banking house because of this rule of "banking ethics," which is neither more nor less than an understanding not to compete.

Your committee is of the opinion that such affiliations as are here shown to exist with competing enterprises are not wholesome, that they do not promote competition, but on the contrary tend as a cover and conduit for secret arrangements and understandings in restriction of competition through the agency of the banking house thus situated.

#### SECTION 11.—RAILWAY REORGANIZATIONS AS AN INSTRUMENT OF CONCENTRATION.

Our archaic, extravagant, and utterly indefensible procedure for the reorganization of insolvent railroads has furnished these banking groups the opportunities of which they have not been slow to avail themselves, of securing the dominating relation that they now hold to many of our leading railroad systems. At one time or another within the past 30 years the bulk of our railways have gone through insolvency and receivership. The proceedings are sometimes instigated by the management through a friendly creditor (and are then generally collusive in their inception) or through the trustee for bondholders with the cooperation of the company. The railway company admits its insolvency, consents to the receivership, and one or more of the officers under whose administration insolvency was brought about, or their nominees, is made a receiver, and sometimes the sole receiver. Neither creditors nor stockholders, who are the parties really interested, are notified or have an opportunity to be heard either on the question of insolvency or of the personnel of the receivers. The stage has been set in advance, and so we find that simultaneously with the appointment of the receivers, or perhaps before, a self-constituted committee is announced, frequently consisting of men well known in the financial world, most of whom have no interest in the property, selected by a leading banking house. They invite the deposit of securities for mutual protection.

This committee in due course presents a plan for the reorganization of the property. If the security holders do not like it, their only alternative is to form another committee, if they can arrange to combine their scattered forces and find influential men who have the courage

to oppose the banking house and who can finance the cash requirements of these colossal transactions in hostility to the banking house that was first in the field. It is not easy to find such men. It is becoming daily more difficult, and it is well-nigh impossible to find rival banking houses to lead the opposition.

The usual outcome has been that the defenseless security holders take whatever plan is offered, however unjust, as against the alternative of being entirely wiped out through the sale of the property under foreclosure. There have been rare exceptions, before the power of these banking houses became irresistible, when the security holders have wrung concessions through revolt.

These plans have usually provided that the securities of the new or reorganized company shall be placed for a term of years in a voting trust named by the bankers. In that way and as the result, also, of reorganizations in which there was no voting trust, but in which the initial officers and directors were named by the bankers as reorganization managers, banking domination of the following railroad systems was secured by Messrs. Morgan and Kuhn, Loeb & Co.:

First. The Baltimore & Ohio, where Kuhn, Loeb & Co., with Speyer & Co., were the reorganization managers, the plan of reorganization being approved by J. P. Morgan & Co., and Mr. Coster, of that firm, becoming a voting trustee.

Second. The Chesapeake & Ohio, where the reorganization managers were Drexel, Morgan & Co., as the present firm of J. P. Morgan & Co. was formerly named.

Third. The Cincinnati, Hamilton & Dayton, where Morgan & Co. were the reorganization managers and Mr. Morgan is a voting trustee, the voting trust being still in force.

Fourth. The Chicago Great Western, where Morgan & Co. were the reorganization managers and Mr. Morgan and his associate, Mr. Baker, are voting trustees, the voting trust being still in force.

Fifth. The Erie, where Morgan & Co. were the reorganization managers and Mr. Morgan became a voting trustee.

Sixth. The Northern Pacific, where Morgan & Co. were the reorganization managers and Mr. Morgan became a voting trustee.

Seventh. The Pere Marquette, which was reorganized by Morgan & Co.

Eighth. The Southern, which was reorganized by Morgan & Co., Mr. Morgan and Mr. Baker becoming voting trustees and still continuing as such.

Ninth. The Reading, which was reorganized by Morgan & Co., Mr. Morgan becoming a voting trustee.

Tenth. The Union Pacific, which was reorganized by Kuhn, Loeb & Co.

During all this time the property is in the possession of the court through the receivers. The reorganization proceedings are purely extrajudicial. The court has nothing to do with them. Meantime the court authorizes the receivers to borrow money for all sorts of purposes and to issue receivers' certificates, which are usually negotiated through the committee or its bankers, who have in the interim gathered in the bonds and stock of the security holders, who have nowhere else to go.

Generally, after years of delay, the property is put through the form of a sale, but there is no bid except that of the committee, which

pays by surrendering deposited securities. If a security holder has failed to deposit with the committee he gets nothing or whatever pittance may represent his infinitesimal share of the upset or minimum price fixed by the court. The cost to the security holders of the proceeding in any of the cases named is estimated to be anywhere between \$500,000 and \$1,000,000 for receivers, bankers, committee fees, lawyers, etc.

Nowhere is any protection offered to the security holder against oppression or injustice in the plan or its execution or otherwise. No constituted authority supervises the vast expenses he is required to pay. The bankers and the committee are made the sole judges on that and on every other conceivable question, including their own commissions and charges and those of the committee. The court has nothing to do with the arrangement and is powerless to control it.

This is briefly an outline of the process by which, as the result of real or fancied insolvency, these banking houses have come into control of many railroad systems. The remedy is simple if the Federal Government has the power to apply it to railroads and industrial corporations (for the processes and abuses in the latter class are the same) engaged in interstate commerce. It is as follows: Enact the procedure provided under the Companies Acts of Great Britain, whereby the plan on reorganization is placed under the direction and control of the courts. If the plan is just and receives the consent of three-fourths of each class of security holders it becomes binding on the others. If it is unjust a single share can defeat it. No foreclosure or pretended sale is necessary. The years of delay that disgrace our administration of these properties by the courts is unknown. The receivers, instead of being selected, as is usually the case with us, by a combination of the choice of the discredited management and nominee of the court, in which real owners of the property have no voice, is selected under the English law by the votes of those interested in the property. If they fail to agree the official receiver acts at a comparatively nominal cost. No sale of the property is involved. The reorganization is accomplished without it. Six months is the average duration of such a proceeding in England, and the cost is well below 10 per cent of what it is with us. The owners of the property get back their property and with it their right to control it, and no voting trusts are found necessary.

In so far as concerns interstate railroads we recommend that the Interstate Commerce Commission be empowered, subject to review by the courts, to supervise every plan of reorganization and the issue of securities thereunder, to hear objections and to disapprove any plan that it may find inequitable in its issue or distribution of securities. Congress, in our judgment, has the unquestioned power to delegate this duty as an important feature of interstate rate making as affected by security issues.

#### SECTION 12.—SUPERVISION OF SECURITY ISSUES OF INTERSTATE CORPORATIONS AND ENFORCING COMPETITIVE BIDDING THEREOF.

Your committee further recommends as another step in the direction of releasing interstate railroad corporations from the control of these issuing houses that their security issues generally be placed

under the supervision of the Interstate Commerce Commission. The cost of financing their securities and the results realized from their sale enter quite as largely into the eventual cost of construction and affect the question of rates as closely as does any other item of cost. It is at least quite as germane to rate making as are the methods of accounting showing such cost, which are now being effectively supervised by the commission.

On the same theory State commissions all over the country are exercising the right of supervising the details of bond and stock issues of State corporations and the prices at which their securities shall be sold.

Securities should be disposed of only upon public or private competitive bids, or under regulations to be prescribed by the commission and with full powers of investigation that will discover and punish combinations to prevent competition in bidding.

The power of Congress to regulate the sale of securities of industrial corporations engaged in interstate commerce is more doubtful and no recommendation with respect thereto is made at this time.

#### SECTION 13.—INVESTMENTS OF NATIONAL BANKS.

The national banks in the great cities are exceeding their charter powers in the character of the business they are conducting and from which their principal revenues are derived. They are acting as promoters, underwriters, and houses of issue for the securities of railroad and industrial corporations. Their activities have extended even into foreign countries and to highly speculative and undeveloped enterprises, through the thin disguise of the so-called security companies that are attached to them in the manner above described.

Some of them maintain separate departments and selling organizations for the sale of bonds as an important part of their business, and they advertise such securities for sale by circular in the public press. At times these bonds are acquired and paid for by them out of the bank's assets before being sold. At other times they are contracted for and underwritten, but are wholly or partly disposed of before being paid for. They also own as above stated large amounts of bonds for permanent investment.

Your committee can find no semblance of authority for these operations other than for the investment of their resources in bonds, and no express authority for the latter other than as regards bonds of the United States Government. The terms of the banking act would seem to negative the existence of such power and the decisions tend in the same direction.

Revised Statutes, section 5136, provide as follows:

Corporate powers of associations: \* \* \*

Seventh. To exercise by its board of directors, or duly authorized officers or agents, subject to law, all such *incidental* powers as shall be *necessary* to carry on the business of banking; by discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of debt; by receiving deposits; by buying and selling exchange, coin and bullion; by loaning money on personal security; and by obtaining, issuing, and circulating notes according to the provisions of this title.

In *Leach v. Hayes* (31 Iowa, 69, 74), where the question was involved of the right of a national bank to invest in United States

Government bonds, the right was sustained on the ground that it is the policy of the Government to encourage the purchase and sale of its bonds and to facilitate transactions in them.

In *First National Bank of North Bennington v. Town of Bennington* (16 Blatch., 53, 56), it was held that a national bank has the right to buy *coupons* of State bonds on the ground that they are promissory notes within the statute and that they are also evidences of debt. The court added that no intention of its views concerning the right to purchase and hold the bonds was intended.

The courts of Pennsylvania decided in *Bank of Allentown v. Hoch* (89 Pa., 324, 327); and in *Fowler v. Scudder* (72 Pa., 456) that a national bank is not authorized to act as a broker or agent in the purchase of bonds and stocks.

See also *Wecker v. First National Bank* (42 Mo., 581); *First National Bank v. National Exchange Bank* (92 U. S., 122); *California Bank v. Kennedy* (167 U. S., 362).

Chief Justice Waite, in a leading case, remarked that while dealing in stocks is not expressly prohibited, such prohibition is implied from the failure to grant the power. (*First National Bank of Charlotte v. National Exchange Bank of Baltimore*, 92 U. S., and other cases referred to on p. 45 of *Bolles on National Bank Act.*)

The Supreme Court of the United States, in the comparatively recent case of *First National Bank of Ottawa v. Converse* (209 U. S., 425), held that a national bank can not invest its surplus or any other portion of its means in the shares of a savings or national bank or other corporation.

There is no distinction in the phraseology between the power of a national bank to buy bonds and to buy stock unless it be included in the power of "discounting and negotiating \* \* \* evidences of debt." This seems to us a strained construction. On the demand of the comptroller they have parted with their stocks, but he seems to have made no protest as yet against the holding of bonds. And so they continue to hold, buy, sell, and deal in them.

While the law narrowly restricts the taking of bonds and stocks as above described for present debts it grants the broadest authority for securing past debts. To this end it may take the bonds and stocks of any kind of corporation. (*Touterloot v. Whitted*, 9 N. Dak., 467.)

There is at least grave doubt of the power of national banks to buy and sell bonds. Certainly they were not intended to be issuing houses, security-investing companies, or dealers in securities or promoters, and should be expressly prohibited from becoming such.

Whilst the committee was unable to ascertain the sources of the abnormal profits of banks controlled by the inner group, such as the First National, the Chase, and the National City Banks, and of the Guaranty and Bankers' Trust Cos., the surface indications point to transactions of this character as having largely contributed to that result.

The bond investments of banks, although of doubtful legality under existing law, stand on an entirely different footing. We are of opinion that national banks should be expressly empowered to invest 25 per cent of their capital and surplus in State, city, and county bonds and in mortgage bonds of corporations that have con-

tinuously paid their interest for not less than five years next preceding their purchase or whose operations show that as to newly issued bonds the corporations had earned sufficient on their then operating properties to pay the interest on the newly issued bonds during each year of that period.

The business of issuing and buying new and untried bonds is not, however, the proper function of a bank. Its resources should be available and should be devoted to supplying the needs of the commercial community. They would doubtless be so employed if the attractions of promotion and syndicate transactions were removed from them and their officers. A further objection to clogging a bank with fixed investments in new and untried bonds, however meritorious (and we are not criticizing the merit or genuineness of the investments), lies in the fact that in times of panic and stress, when the assets of a bank should be most liquid, these newly issued and undigested securities are the least readily convertible into money.

We have been much embarrassed in our consideration of these questions affecting the limitation on the powers and activities of national banks and of the recommendations that should be made concerning them by the fact that banks and trust companies organized under State laws in some States have been accorded the privilege of owning and holding bonds and stocks and that they have other powers which are denied to national banks. We are reminded that if the activities of the national banks are to be too severely circumscribed they may be converted into State institutions to the detriment of the national banking system.

Due weight has been given to these considerations in the conclusions we have reached. We are persuaded that the States will follow the lead of the Federal Government and will cooperate in enforcing upon our banking institutions conservatism and in confining them to their legitimate purposes. That situation will, in our judgment, in any event right itself by the greater confidence that national banks will enjoy and the business that will thereby be attracted to them by their greater conservatism and by reason of the fact that their funds and those of their depositors, instead of being locked up in fixed investments as the inevitable result of their engaging in these ventures, will be available for the current needs of their customers.

The enforcement upon national banks of proper limitations in the use of their funds will serve also to make them less attractive objects of control by the great issuing houses, and thus help to check the recent alarming movement in that direction. When the credit and funds cease to be available for absorbing the security issues of these houses, the incentive to domination will cease to exist.

If by cooperation between Congress and the Legislatures of the States of New York, Massachusetts, and Illinois the resources of the national and State banks and trust companies in the cities of New York, Boston, and Chicago and of the four great life insurance companies of New York can be removed from the influence of the banking groups above described by limiting the use of their funds strictly to the legitimate purposes to which such trust funds should be put, we will have gone a long way toward halting the rapid onward march of this dangerous concentration of control of money and credit.

Your committee notes that these banking groups have shown no disposition toward acquiring control of savings banks in the States in which their investments are rigidly restricted.

**SECTION 14.—PUBLICITY OF ASSETS AND OF NAMES OF STOCKHOLDERS OF NATIONAL BANKS.**

The usefulness of national banks as instrumentalities of the banking groups which have been described, particularly as outlets for security issues, would be still further curtailed if their assets other than the names of borrowers were open to public inspection. In this way it would be possible to know exactly what use was being made of a bank's funds. The investment of a disproportionate part thereof in given securities would be made more difficult.

A depositor is entitled to have the information on which to determine for himself whether the bank in which he has his money is secure. And prospective investors in the stock of a bank are entitled to know what its property is. A bank is such a sensitive organism that the more of its affairs are known to the public the more completely will it secure the public confidence.

Mr. Murray, the Comptroller of the Currency, expressed himself strongly in favor of publicity both as regards this subject and publicity of the names of stockholders. No sufficient reason has been urged against it (R., 1378, 1379):

Q. Looking at the subject from the point of view of justice to the stockholders and depositors, in your judgment is it not but fair to them that they should know of what the assets of the bank consist?

A. I certainly think it is. Their money is invested. It is their money and the depositors' money involved in these securities, and I see no reason why they should not know, aside from the other effects it might have as I have stated.

Q. As to the list of stockholders, do you know why that should be regarded as a secret?

A. I do not. I think the list of stockholders of every national bank should be as public as the morning newspaper.

Q. That would require a change in the law, would it not?

A. No; the law now says that the banks shall keep in public view a complete list of its stockholders.

Q. It is only available to stockholders, however, is it not?

A. No; it is available to stockholders and to the assessing officers of the different localities.

Q. It is not available, is it, to a depositor who wants to know who really owns and controls the bank with which he is doing business?

A. No; it is not; not unless the bank cares to give it to him.

Q. I mean it is not legally available to him.

A. No.

Q. It ought to be, ought it not?

A. I think so. My view is that the lists of stockholders of national banks ought to be posted publicly in the lobby, for everybody to see who wants to see.

Mr. Schiff's view is as follows (R., 1690):

Q. As a director and stockholder in banks and trust companies, Mr. Schiff, do you see any objection to requiring the banks to make public the lists of their assets?

A. The more publicity the bank gives the better it will be.

Q. You see no objection to such publicity as to what their assets are?

A. No; I see no objection.

Q. Do you not see many manifest advantages in it?

A. I do.

Q. Would it not, in your opinion, lead to more careful and conservative management in the selection of their securities?

A. I think it would.

Mr. Davison also approved of the assets of banks and trust companies being published, but disapproved of the publication of lists of their stockholders. (R., 1872, 1873.)

Whilst, of course, Congress can not enforce the publication of the assets and names of stockholders of State banks and trust companies, it can set an example by making such provision in the case of national banks, and your committee recommends that it do so.

#### SECTION 15.—SECURITY HOLDING COMPANIES AS ADJUNCTS TO NATIONAL BANKS.

Your committee is of opinion that national banks should not be permitted to become inseparably tied together with security holding companies in an identity of ownership and management. These holding companies have unlimited powers to buy and sell and speculate in stocks. It is unsafe for banks to be united with them in interest in management. The temptation would be great at times to use the bank's funds to finance the speculative operations of the holding company.

The success and usefulness of a bank that holds the people's deposits are so dependent on public confidence that it can not be safely linked by identity of stock interest and management with a private investment corporation of unlimited powers with no public duties or responsibilities and not dependent on public confidence. The mistakes or misfortunes of the latter are too likely to react upon the former. However profitable the participation of the bank, whether under the guise of a mere lender of money or underwriter or purchaser of securities in which the security company is interested, the incentive to the bank to participate in these adventurous transactions is one that should be removed beyond the reach of its officers.

The whole arrangement is a mere pretext behind which the bank's officers are shielding themselves in making money for the bank's stockholders through the prestige, resources, and organization of the bank and by means that are forbidden to the bank.

They are so organized that the stock of the holding company must always be owned by the same persons who own the stock of the bank and in the same proportions, while no person not a director of the bank may be a director of the holding company, and finally, the stock of the holding company must be held by the officers of the bank as trustees. The bank and the holding company are thus one and the same association of persons and must always remain such.

Mr. Baker thus described the purpose of the stockholders of the First National Bank in organizing the First Security Co. (R., 1431):

Q. Then the purpose of organizing the security company was to do things that the bank could not lawfully do. Was that it?

A. Yes, sir; to do things that they were not specially authorized to do.

Q. This was a means, then, of really carrying on the same business as you had been carrying on before without coming in contact with the law?

A. Yes, sir.

Q. That was the purpose of it?

A. Yes, sir.

Under these conditions to say that acts done in the name of the holding company are not the joint acts of the persons who alone constitute the bank and therefore the acts of the bank flies in the face of common sense.

It would be discreditable to the law if it sanctioned such a palpable evasion of its prohibitions. Your committee does not believe it does and advises that the Comptroller of the Currency give notice to national banks upon which these holding companies have been engrafted that the arrangement is in violation of the national banking act and that unless terminated proceedings will be taken to forfeit their charters.

#### SECTION 16.—RELATIONS OF OFFICERS AND DIRECTORS TO NATIONAL BANKS.

- (a) In borrowing from their banks.
- (b) In exchanging loans between bank officers and directors.
- (c) In receiving commissions or compensations for loans.
- (d) In participating in syndicate underwriting operations in which these banks are or become interested.

(a) It appears from the testimony that it is customary for officers and directors to borrow from their banks. The comptroller tells us that this has been a prolific cause of bank failures. (R., 1380, 1381.) The leading bankers who were examined seemed to agree in the main that officers should be prohibited from thus borrowing, but that it should be permitted to directors. (Reynolds, R., 1642, 1643; Schiff, R., 1677, 1678; Davison, R., 1975, 1976.)

It was argued that if such a prohibition were applied to directors banks would often lose valuable business and men of competency and substance would not thus restrict themselves by becoming bank directors.

There can be no question of the wisdom of prohibiting all loans to or for officers and all financial transactions between them and their banks, nor that the prohibition should be made so broad and all-embracing as to render evasion impossible. It is too much like smoking in a powder house.

We have reached the conclusion, but not without hesitation, that this prohibition should not extend to directors. No loans should, however, be made to them or for their ultimate benefit and no transaction permitted between them and their banks without ample previous notice of the transaction to their codirectors, nor unless the details are first spread in full on the minutes of the meeting at which the resolution authorizing the loan is passed.

(b) The use by officers of banks and trust companies of their institutions, either openly or by subterfuge, in exchanging loans or making loans to one another or to brokers and others on securities that are being carried for them or in which they have an interest should also be prohibited. All persons who knowingly procure such loans to be made should be included within the prohibition.

Every loan made by any national bank to or in the interest of an officer of another national bank or of a State bank or trust company

should be under the same conditions as a loan made by a national bank to one of its directors, except that the comptroller shall not make such loans public.

Any loan or application for loan or any other transaction made in the interest or for the eventual benefit of an officer or director of a national bank—either alone or with others—or upon securities wholly or partly belonging to such officer or in which he is interested, should be required to be made in the name of such officer or director. It should be made a misdemeanor to apply for or secure money or to make or attempt or abet or become party to any transaction under cover or to fail to make full disclosure. The prohibition should be made sufficiently broad to apply to bankers, brokers, and others who borrow from banks on the securities they are carrying for the officers of these banks.

It is believed that these regulations will go far toward curbing speculative transactions by officers of banks with the funds of their depositors and will promote the independence of these officers.

(c) The Comptroller of the Currency in his report for 1911 made the following statements and recommendations on the subject of officers of national banks receiving commissions for compensation on loans made by their banks:

An amendment forbidding any officer of a national bank to directly or indirectly receive or accept money or other valuable thing from any borrower from the bank as a reward, inducement, or consideration for obtaining the loan from the bank of which he is such officer should also be enacted.

The dishonest practice by officers of national banks of receiving personal compensation for loans made by the bank is a growing evil and has already reached such proportions as to call for criminal legislation on the subject. In this manner either the bank is defrauded of lawful interest which it would otherwise receive or usurious interest is exacted of a borrower by the corrupt officer. A secret reward to the officers is sometimes a deliberate bribe for obtaining a loan on insufficient security.

It is recommended that the taking or accepting of money or other valuable thing from a borrower by any officer of a national bank for his own personal use as a reward, inducement, or consideration for obtaining the loan from the bank of which he is such officer shall be made an offense and punished by imprisonment in the penitentiary.

A law should be enacted determining the period during which any person can be prosecuted, tried, or punished for offenses under the national-bank act.

We heartily concur in these views and recommendations.

(d) Officers and directors of national banks should be prohibited from participating in syndicates, promotions or underwritings of securities in which their banks are or may become interested. A like situation existed in the life insurance companies of New York prior to the investigation of these companies in 1905. It was there disclosed that some of the companies and their officers and directors were in the habit of underwriting large blocks of securities for which they received commissions and that the securities thus underwritten frequently found their way among the assets of the companies. This was stopped by the legislation of 1906 which prevented the companies from thereafter engaging in such enterprises.

We recommend the same legislation with respect to national banks. The business of guaranteeing for a commission that bankers will sell an issue of bonds is not one in which a bank should engage with the money of its depositors for the benefit of the stockholders. Nor should the bank be permitted to buy from or through the issuing house or to lend upon any of the bonds that have been underwritten

by any of its officers or directors, so long as the syndicate is outstanding or for one year thereafter.

It may be that their judgment will not be consciously influenced by the fact that they will be relieved from their obligation to take the unsold securities and will thus earn their underwriting commissions to the extent that their bank purchases such bonds, but the subconscious influence and effect of the transaction is such that officers and directors should not be placed in that inconsistent attitude.

The same reasons apply to loans on such securities. If the underwriting syndicate can borrow on the securities pending their sale from banks in which the underwriters are officers or directors, the underwriting profits are earned on a less investment than if they must take up and pay for the unsold securities. That is what they should do unless they can borrow on them from institutions to which they hold no trust relation. In other words, the officers and directors of banks and the banking houses that control them should not be permitted to exploit the institutions for their own profit. All the earnings that are made by the officers by the use of the bank's money should go to the banks.

Here again the denial to the committee of access to the books of the banks has made it impossible to present the extent of this practice. The fact was, however, admitted that such practices exist. (Hine, R., 2034.) Some idea of its extent may be gleaned from the California petroleum transaction to which reference has been made.

#### SECTION 17.—CURRENCY REFORM AND CONCENTRATION OF CONTROL OF MONEY AND CREDIT.

The general subject of currency legislation is in the hands of another subcommittee of the full committee. That topic has been accordingly carefully avoided by us so as to prevent duplication of work and possible conflict of authority.

The subjects come closely together, however, in various aspects, and notwithstanding the caution exercised by us there were a few occasions on which witnesses volunteered statements and opinions to the effect that the defects of our present currency system were largely responsible for the alleged condition described in the resolutions under which we are acting. These assertions are predicated on the requirements of the existing law for retaining a given cash reserve and the right to keep three-fifths thereof on deposit in banks in the reserve cities. It is claimed that in the exercise of this privilege moneys are deposited in New York banks and thus made available, to be loaned for speculative stock-exchange purposes.

It is not within our province to discuss the merits of this situation. That task has been assigned to and is being dealt with by our colleagues. The effect, if any, of that arrangement upon the questions that are being dealt with by us is, however, clearly within our jurisdiction and will be here briefly considered.

We are of opinion that the existing law as to reserves and the alleged defects in our currency system (as to which we express no opinion at this time) have no appreciable effect on the concentration of control of banking resources here under discussion. These funds

would in any even probably come to New York when they could be employed there to better advantage than in their respective localities. It appears that on November 1, 1912, 32 of the New York banks had \$240,480,000 outstanding in stock-exchange loans that were placed by them directly for their correspondents independently of the deposits of these correspondents. It does not appear what proportion of the \$483,373,000 of deposits of out-of-town banks that were then in these 32 New York banks represented reserves nor what part were kept there on account of the 2 per cent interest that is allowed on them. They are attracted there because, as stated, New York City is the only public money market and because they can be utilized in stock-exchange speculation.

The most effective way of keeping these funds at home, where they could perform their legitimate function of supplying the needs of trade and commerce in the section from which they are drawn, would be to limit the proportion of its resources that may be loaned by any bank on stock-exchange collateral.

Banks, like individuals, will use their money where it can be employed to the best advantage within legal limits. No currency system can or ever will be devised that will prevent that result.



We are not unmindful of the important and valuable part that the gentlemen who dominate this inner group and their allies have played in the development of our prosperity. There should be no disposition to hamper their activities if a situation can be brought about where their capital, prestige, and connections can be independently employed in free and open competition. Without the aid of their invaluable enterprise and initiative and their credit and financial power the money requirements of our vast ventures could not have been financed in the past, and much less so in the future.

It is also recognized that cooperation between them is frequently valuable, and often essential to the public interest as well as their own, in order to permit of the furnishing or guaranteeing of the requirements of our vast enterprises of the present day and of the still larger ones that are probably in store for us.

But these considerations do not involve their taking control of the resources of our financial institutions or of the savings of the people in our life insurance companies nor that they shall be able to levy tribute upon every large enterprise; nor that commercial credits or stock exchange markets and values shall wait upon their beck and call. Other countries finance enterprises quite as important as our own without employing these methods.

Far more dangerous than all that has happened to us in the past in the way of elimination of competition in industry is the control of credit through the domination of these groups over our banks and industries. It means that there can be no hope of revived competition and no new ventures on a scale commensurate with the needs of modern commerce or that could live against existing combinations, without the consent of those who dominate these sources of credit. A banking house that has organized a great industrial or railway com-

bination or that has offered its securities to the public, is represented on the board of directors and acts as its fiscal agent, thereby assumes a certain guardianship over that corporation. In the ratio in which that corporation succeeds or fails the prestige of the banking house and its capacity for absorbing and distributing future issues of securities is affected. If competition is threatened it is manifestly the duty of the bankers from their point of view of the protection of the stockholders, as distinguished from the standpoint of the public, to prevent it if possible. If they control the sources of credit they can furnish such protection. It is this element in the situation that unless checked is likely to do more to prevent the restoration of competition than all other conditions combined. This power standing between the trusts and the economic forces of competition is the factor most to be dreaded and guarded against by the advocates of revived competition.

Mr. Morgan was unable to name an instance in the past 10 years in which there had been any railroad building in competition with any of the existing systems. He attributed it to the restrictions of the Interstate Commerce Commission. The fact is, however, as we all know, that railroad construction is constantly being prosecuted—necessarily so with our rapidly growing population—but that instead of being done independently as formerly it is now done by the great systems.

It is impossible that there should be competition with all the facilities for raising money or selling large issues of bonds in the hands of these few bankers and their partners and allies, who together dominate the financial policies of most of the existing systems. There never will be, until this combination or community of interest can be dissolved by either closing to them the vaults of the banks, life insurance companies, and other trustees of other people's money or by opening them to meritorious competing enterprises.

Mr. Baker, when upon the witness stand, was unable to name a single issue of as much as \$10,000,000 of any security, either in the railroad or industrial world, that had been made within 10 years without the participation or cooperation of one of the members of this small group. He subsequently wrote naming only the case of a single issue of \$13,500,000. It was proved as to this instance by the notice issued to stockholders that Morgan & Co. were in fact largely interested and received a part of the profits from the issue. Yet it appears that within *six* years the *joint* account transactions of that group in *public issues alone* (not including any issues made by them alone or privately), amounted to over *three billion dollars*, of which a \$10,000,000 issue would have been less than one-third of 1 per cent.

Issues of securities of local or small enterprises requiring moderate sums of money are frequently financed without the cooperation of these gentlemen; but from what we have learned of existing conditions in finance and of the vast ramifications of this group throughout the country and in foreign countries we are satisfied that their influence is sufficiently potent to prevent the financing of any enterprise in any part of the country requiring \$10,000,000 or over, of which for reasons satisfactory to themselves they do not approve. Therein lies the peril of this money power to our progress, far greater than the combined danger of all existing combinations. The latter may at last fall of their own weight, especially if deprived of the protection and support

against competition referred to, or they may be disintegrated as unlawful.

The men who established our great industries have added to the prosperity of the country during the period of the upbuilding of these industries; but they none the less violated the law when they reversed the processes under which the country had grown and prospered by combining to throttle the competition upon which they had thrived. Whilst they were struggling against one another for supremacy they were a valuable asset to the country; since they have pursued the opposite policy they have become a menace.

The gentlemen constituting this inner circle have, however, violated no law in what they have done, so far as we are able to gather; but that is rather because of the loose, intangible character of this recently developed community of interest and because the law has not yet properly safeguarded the community against this form of control.

The acts of this inner group, as here described, have nevertheless been more destructive of competition than anything accomplished by the trusts, for they strike at the very vitals of potential competition in every industry that is under their protection, a condition which, if permitted to continue, will render impossible all attempts to restore normal competitive conditions in the industrial world.

It accordingly behooves us to see to it that the bankers who require and are bidding for the money held by our banks, trust companies, and life insurance companies to use in their ventures are not permitted to control and utilize these funds as though they were their own.

If the arteries of credit now clogged well-nigh to choking by the obstructions created through the control of these groups are opened so that they may be permitted freely to play their important part in the financial system, competition in large enterprises will become possible and business can be conducted on its merits instead of being subject to the tribute and the good will of this handful of self-constituted trustees of the national prosperity.

## CHAPTER FOURTH.—SUMMARY OF RECOMMENDATIONS.

Summed up, the recommendations of your committee for enactment into law are:

### SECTION 1.—AS REGARDS CLEARING-HOUSE ASSOCIATIONS.

*A. Incorporation and regulation.*—National banks should not be permitted to be members of clearing-house associations which are not bodies corporate of the States in which they are respectively located, and every solvent and properly managed bank or trust company should have the right, enforceable at law, to become and remain a member: *Provided*, That no clearing association should be required to admit a member having a capital stock not less than that required of a national bank in the same locality.

*B. Examination of members.*—Periodical examinations of members by a committee of the association should be prohibited, and instead all such examinations should be conducted by public authorities.

*C. Issuance of clearing-house certificates.*—Until other measures of relief are provided by Congress such associations should be permitted to issue certificates on the security of their members' assets for circulation amongst members to pay balances owing to each other at the clearing house, but only on condition that both the issuance and retirement of such certificates shall be under governmental control.

*D. Regulation of rates for collecting out-of-town checks.*—The practice now so general amongst such associations of compelling members, under pain of expulsion, to charge prescribed rates for collecting out-of-town checks should be prohibited.

*E. Regulation of rates of discount and of interest on deposits, etc.*—Such associations should be further prohibited from prescribing rates of interest or discount, rates of interest allowed on deposits, rates of exchange, or any other regulation not appropriate to its function of instrumentality for the collection of checks by banks of the same community one from another, that interferes with competition.

### SECTION 2.—AS REGARDS THE NEW YORK STOCK EXCHANGE.

*A. Conditions precedent to use of mails, telegraph, and telephone.*—That Congress prohibit the transmission by the mails or by telegraph or telephone from one State to another of orders to buy or sell or

quotations or other information concerning transactions on any stock exchange, unless such exchange shall—

1. Be a body corporate of the State or Territory in which it is located.

2. Require corporations whose securities it lists to make a complete disclosure of their affairs, in particular any commissions paid to promoters, middlemen, or bankers out of any such security issue or the proceeds thereof.

3. Require a margin of not less than 20 per cent on all purchases of stock.

4. Prohibit as far as possible the execution of simultaneous or substantially simultaneous orders proceeding from the same person or persons to buy and sell the same security for the purpose of creating an appearance of activity therein and any orders the purpose of which is to inflate or depress the price of any security.

5. Prohibit members from pledging securities purchased and carried for a customer for an amount greater than the unpaid portion of the purchase price, whether with or without the consent of such customer.

6. Prohibit members from lending to other members securities carried by the former for customers, whether with or without such customers' consent.

7. State in its charter the condition on which issues of securities shall be admitted or removed from the trading list, and provide for a judicial review of its action in this regard.

8. Keep books of account, showing the actual names and transactions of customers, and give access thereto to the Postmaster General.

#### SECTION 3.—AS REGARDS CONCENTRATION OF CONTROL OF MONEY AND CREDIT.

*A. Consolidations of banks.*—Two or more banks should not be permitted to consolidate unless such consolidation shall have been approved by the Comptroller of the Currency as in the public interest. He should have plenary power to forbid it where it threatens to result in undue concentration of control.

*B. Interlocking bank directorates.*—No person should be permitted to be a director in more than one national bank serving the same community or locality, nor should any person who is a director of any State bank or trust company, or is a partner or associate of any private banker or banking firm, be eligible as a director of any national bank serving the same community or locality, except that a director in a national bank may have one partner who is a director in a trust company.

*C. Interlocking stockholdings amongst banks.*—No part of the stock of any national bank should be permitted to be owned or held directly or indirectly by any other bank or by any trust company or holding company; and no national bank should be permitted to own or hold any part of the stock of any other bank or trust company.

*D. Voting trusts in banks.*—The transfer of any part of the stock of national banks to trustees solely or primarily in order that they may

vote the same at annual elections and other stockholders' meetings—"voting trusts," as they are generally known—should be expressly prohibited.

*E. Cumulative voting.*—Minority representation in the directorates of national banks should be secured by adopting the system of cumulative voting, i. e., by providing that at elections for directors each stockholder shall have as many votes as are equal to the number of his shares, multiplied by the number of directors to be elected, which votes may be cast solidly for one director or distributed among several, as the shareholder shall see fit. And no national bank should be permitted to purchase the obligations or lend upon the obligations or shares of any corporation whose directors are not chosen at elections conducted under the cumulative system of voting.

*F. Security-holding companies as adjuncts to banks.*—The stockholders of a national bank should be expressly prohibited from becoming associated as stockholders in any other corporation under agreements or arrangements assuring that the stock of such other corporation shall always be owned by the same persons or substantially the same persons who own the stock of the bank or that the managements shall be substantially the same.

*G. Fiscal agency agreements.*—Interstate corporations should not be permitted to enter into any agreements or other arrangements constituting any bank, banker, or trust company their sole fiscal agent to dispose of their security issues.

*H. Private bankers as depositaries.*—Interstate corporations should not be permitted to deposit their funds with unsupervised, unregulated, private bankers who do not disclose their resources or liabilities, who keep no reserve and are free to invest their depositors' money as they see fit.

*I. Banks not to engage in underwritings.*—National banks should be prohibited from directly or indirectly engaging in any promotion, guaranty, or underwriting, involving the purchase, sale, public offering, or issue, or other disposition of the securities of any corporation.

*J. Investments of banks in bonds.*—National banks should be expressly authorized to invest 25 per cent of their capital and surplus in the obligations of States, cities, counties, or other municipal subdivisions and in mortgage bonds of corporations on which interest has been regularly paid for five years or in case of new issues when the earnings of the corporation within the period were sufficient to have paid such interest.

*K. Reform of railroad reorganization.*—The method of reorganizing insolvent railroads should be reformed by adopting in substance the system provided by the companies' act of Great Britain, whereby, briefly stated, the plan and procedure on reorganization are placed under the direction and control of the courts, the receiver is elected by the votes of those interested in the property, no sale is involved, a single shareholder can defeat an unjust plan.

*L. Railroad reorganizations under supervision of Interstate Commerce Commission.*—The Interstate Commerce Commission should be empowered, subject to review by the courts, to supervise and review plans for the reorganization of interstate railroads and the issue of securities thereunder.

*M. Interstate railroad security issues under supervision of Interstate Commerce Commission.*—The security issues generally of interstate

railroads should be placed under the supervision and control of the Interstate Commerce Commission.

*N. Competitive bidding for interstate security issues.*—It should also be required that in the disposition of such issues competitive bids, public or private, be invited.

*O. Borrowings by officers from their own banks.*—Borrowings, directly or indirectly, by an officer of a national bank from the bank of which he is such officer, and all other transactions between them of a financial character, should be rigidly prohibited.

*P. Borrowings by directors from their own banks.*—Borrowings, directly or indirectly, by a director of a national bank or by any firm of which he is a member or any corporation of the stock of which he holds upward of 10 per cent, from the bank of which he is such director, should only be permitted on condition that notice shall have been given to his codirectors and that a full statement of the transaction shall be entered upon the minutes of the meeting at which such loan was authorized.

*Q. Financial transactions of bank officers to be in their own names.*—Loans or other transactions with a national bank in the interest of or for the eventual benefit of an officer or director of a national bank, either alone or with others, should be required to be made or done in the name of such officer or director.

*R. Participations by bank officers and directors in underwritings.*—Officers and directors of national banks should be prohibited from participating in syndicates, promotions, or underwritings of securities in which their banks are or may become interested as underwriters or owners or as lenders thereon.

*S. Accepting and offering rewards for bank loans.*—It should be made a crime for officers or directors of national banks to accept any compensation, commission, or other form of reward whatsoever, for making, directing, voting for, or otherwise promoting any loan of the bank's funds; and it should also be made a crime to offer any such inducement.

*T. Limitation of number of directors of bank.*—The number of directors of national banks should be limited to not less than five nor more than thirteen.

*U. Publicity for assets and stockholders of banks.*—National banks should be required to open to public inspection schedules of their assets other than the names of borrowers, and to make lists of their stockholders public.

## CHAPTER FIFTH.—BILLS.

To carry out in part the foregoing recommendations, two bills have been drafted and accompany this report, namely:

First. A bill to amend the national banking laws, consisting of 19 sections, as follows:

A BILL To amend the National banking laws.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SECTION 1. That no national bank may be, become or remain a member of, or otherwise affiliated or connected with, any voluntary or unincorporated organization performing any of the functions of a clearing house or clearing-house association; nor shall such bank be, become, or remain a member of or otherwise affiliated or connected with any incorporated clearing-house association or with any agency or organization performing similar functions except under the following conditions:

First. Such association must have been created a body corporate by the State or Territory in which such national bank is located and doing business or by an adjoining State or Territory.

Second. The membership of such association must be limited to incorporated banks and trust companies by the charter or articles of incorporation of such association or the law under which it exists, which must further provide that any solvent bank or trust company doing business within the prescribed territorial boundaries of the association, whether organized under Federal or State law, having a capital stock not less than that required of a national bank in the same locality, upon payment or tender of the fees fixed by the association and upon compliance with any other conditions prescribed by the association and which must be reasonably necessary to the performance of the legitimate functions of membership in such association as hereinafter stated, shall be entitled to become and remain a member and freely to enjoy its facilities and may enforce such right by summary process in any court of competent jurisdiction; that no member shall be suspended or expelled or deprived of the enjoyment of the equal facilities of such association without the approval in writing first obtained by the association from the superintendent of banks or like official of the State or Territory in which the member so affected is incorporated if there be such official, or of the Comptroller of the Currency if the member in question is a national bank: *Provided*, That the association shall by its charter prescribe its territorial boundaries and may thereafter upon application for membership determine in the first instance whether the applicant is solvent, which determination shall however be subject to review and revision by the Comptroller of the Currency if the applicant is a national bank or of the corresponding State official if the applicant is a State bank or trust company: *And provided further*, That such determinations shall thereafter be subject to further review and revision by any court of competent jurisdiction by summary process at the instance of such association or of such applicant.

Third. The charter or articles of incorporation of such association, or the law under which it exists, may authorize the association in its discretion or that of its constituted authority to issue certificates on the security of members' assets to the extent that it shall determine that it and its members are adequately secured against loss, for use solely amongst members and which shall not be otherwise transferable, to pay debit balances owing by members to each other at the clearing house of such association, on condition that such certificates shall be the joint and several obligations of the several members of the association and that the same shall not be required to be redeemed by any member to whom issued except after due notice and upon the approval of the Comptroller of the Currency, if the member shall be a national bank, or of the Superintendent of Banks or corresponding official of the State or Territory in which the member shall have been incorporated, if such member be a State bank or trust company: *Provided*, That the members to which or for the account of which such certificates are issued shall be primarily liable to the holders thereof and to the association for the payment thereof, and that as between the several members of said association, other than the

member to which such certificates are issued, each member shall be liable and shall be required to contribute to the discharge of such defaulted obligations as shall remain unpaid by the members to which such certificates are issued, only in the proportion that its capital, surplus, and undivided profits, as shown by its official report next preceding such default, bears to the aggregate capital, surplus, and undivided profits of all the remaining members.

Fourth. The charter or articles of incorporation of such association or the law under which it exists must further expressly provide for the voluntary resignation or withdrawal of any member subject to the discharge of its obligations to the association and the members thereof and that all the acts of said association shall be subject to judicial review at the suit of any member or applicant for membership.

Fifth. The said charter or articles of association or the law under which said association is organized must prohibit it and its officers and managers from exercising or attempting to exercise, directly or indirectly, any control or influence over its members or over the conduct of their business except as expressly authorized by its charter and from making or attempting to make or enforce any rule, regulation, arrangement, or understanding in respect of any of the following prescribed subjects:

(a) The restriction or regulation of competition between the members of the association or any of them in any matter or thing connected with the business conducted by such members or authorized to be done by them under their respective charters;

(b) The fees, commissions, or other compensation chargeable by or payable to or to be charged by or paid to any member by its customers or otherwise for the collection by or through such member or its agent or correspondent of checks, drafts, notes, or bills of exchange drawn upon banks, bankers, trust companies, or others that are not members of such association or that are outside its boundaries;

(c) The rates of interest or discount chargeable or to be charged by or payable or to be paid to members on loans or discounts to or for customers or others;

(d) The rates of interest to be allowed by members on deposits; and

(e) The rates of exchange.

Sixth. No such clearing-house association shall make, undertake, or attempt any examination of the books of account, business, or transactions of any national bank except through the Comptroller of the Currency as herein provided and the official examiners authorized to be employed by him under this act. Any such association may, however, by requisition upon the Comptroller of the Currency, procure the appointment by said comptroller of such number of examiners to be nominated by the association and approved by the comptroller in addition to his usual staff of examiners as in the judgment of the association will be necessary or proper to secure the thorough performance of the work of the examination of the national banks members of such association at such stated intervals as the association may require in addition to the examinations prescribed by existing law: *Provided*, That there shall be paid monthly by said association to the comptroller the entire cost, charges, and expenses incurred by the comptroller in such further examinations.

Such examiners may be employed by the comptroller either for specified and successive terms not exceeding one year each or under such other arrangement as may be made with the association. All particulars gathered by the comptroller through such examiners or otherwise in the course of such examination or otherwise with respect to the names of borrowers, the amounts owing by them, respectively, and the collateral, if any, for such loans shall be retained in the custody of the comptroller and shall not be divulged to the association or to any of the members thereof other than to the member directly affected thereby, except that the comptroller may, in his discretion, impart such particulars to the association or to any authorized committee thereof whenever and only when in his judgment it shall be necessary to assure such association against the impending insolvency of any such member, and then only to the officials of the association intrusted with the power to receive such particulars. All data other than that concerning the names of borrowers, the amounts owing by them, and the collateral for such loans shall be at all times available to the association and to all members thereof and to every stockholder and depositor in such national bank and to all others who, in the judgment of the comptroller, shall request the same for proper purposes.

SEC. 2. No national bank shall be or become a party to any agreement, understanding, or arrangement, or shall be or become a member of or otherwise associated or connected with any corporation, association, exchange, agency, or other body, whether incorporated or unincorporated, having for its purpose or which shall engage in any of the prohibited acts specified in section 1 of this act: *Provided*, That nothing herein contained shall be construed to prohibit any national bank from establishing jointly with other banks or trust companies, or both, doing business in the same city, town, or village or within a radius of 50 miles, an agency for the collection of checks,

drafts, notes, and bills of exchange drawn only upon banks outside the locality in which such agency is conducted: *Provided further*, That the sole purpose of such agency be to save collection expense to the members in making such collections and that neither such agency nor any of the members thereof shall engage in any of the prohibited acts specified in this or in the next preceding sections.

SEC. 3. That no national bank shall act as clearing agent for any other national bank or for any other bank or for any trust company that is eligible to membership in said association in the same city, town, or other place in which such national bank is located in the collection of checks, drafts, notes, or bills of exchange drawn on any other bank or on any trust company in such city, town, or place, and no national bank shall clear through or collect through any other bank or any trust company in the same city, town, or other place in which such national bank is located any checks, drafts, notes, or bills of exchange drawn on any other bank or on any trust company in such city, town, or place.

SEC. 4. That no national bank shall make or enter into any agreement, arrangement, or understanding with any other bank or with any trust company having the purpose or effect of regulating its charges for collecting checks, drafts, notes, or bills of exchange for its customers or of fixing or regulating rates of interest or discount on such loans to customers or to others, or the rates of interest allowed by it to such customers on deposits, or rates of exchange.

SEC. 5. That no national bank shall knowingly enter into any agreement or arrangement with or lend money or credit to or on account of any person or corporation for use in connection with or to aid in participating in any combination, conspiracy, trust, agreement, contract, or understanding intended to or which shall have the effect to control, regulate, or affect the price or supply of any commodity or article of commerce in, or that is to be imported into, any part of the United States or subject territory; nor shall any such bank knowingly lend or advance any money or credit upon any securities issued pursuant to such combination, conspiracy, trust, agreement, contract, or understanding or in furtherance thereof or in connection therewith.

SEC. 6. Section fifty-one hundred and forty-four of the Revised Statutes is hereby amended so as to read as follows:

"SEC. 5144. ELECTION OF DIRECTORS—CUMULATIVE VOTING.—At all elections of shareholders for directors each shareholder shall be entitled to as many votes as are equal to the number of his shares of stock multiplied by the number of directors to be elected. He may cast all of such votes for a single director or may distribute them among the number to be voted for, or among any two or more of them, as he may see fit. In deciding all other questions at a meeting of shareholders, each shareholder shall be entitled to one vote on each share of stock held by him. Shareholders may vote by proxies, but no officer, clerk, teller, or bookkeeper of such association shall act as proxy and no shareholder whose liability is past due and unpaid shall be allowed to vote. Every shareholder of a national bank heretofore formed shall hereafter exercise his right of voting according to the provisions of this act. No national bank shall accept or hold as security or collateral for any loan, discount, or advance made or negotiated by or with it or otherwise shares of stock or voting trust or other certificates representing any beneficial interest in any corporation unless there shall have been secured and reserved to the stockholders of such corporation the right of representation by cumulative voting as hereby defined."

SEC. 7. There shall be added to the national banking act, immediately following section fifty-one hundred and forty-four of the Revised Statutes, as hereby amended, a section to be known as section fifty-one hundred and forty-four-a, which shall read as follows:

"Sec. 5144-a. Every person voting at any meeting of shareholders for the election of directors, previous to casting his vote, whether such vote be cast in person or by proxy, shall file with the inspectors of election a statement in the following form (the blanks being properly filled in):

I reside in \_\_\_\_\_. I am the owner of record upon the books of \_\_\_\_\_ Bank of \_\_\_\_\_ shares of the stock of said bank, and have been the registered and beneficial owner in my own name and right for upward of ninety days next preceding the date hereof of the aforesaid number of shares of stock, for which I desire to cast my vote at the election for directors to be held on \_\_\_\_\_, or on any adjourned day of said meeting. I do not hold said stock in trust for or for the benefit of any person other than as appears on the face of the certificate of stock held by me and as registered on the books of the association, and no person or corporation other than as appears upon the face of said certificate and upon said books has any beneficial interest in any of said shares or in the proceeds thereof. I have not been paid or promised any money, compensation, inducement, or reward for my vote or proxy or as an inducement to me to cast such vote or give such proxy.

SEC. 8. Section 5145 of the Revised Statutes is hereby amended so as to read as follows:

"SEC. 5145. The affairs of each association shall be managed by not less than five nor more than thirteen directors, who shall be elected by the shareholders at a meeting to be held at any time before the association is authorized by the Comptroller of the Currency to commence the business of banking, and afterwards at meetings to be held at such time in January of each year as is specified therefor in the articles of association. The directors shall hold office for one year and until their successors are elected and have qualified."

SEC. 9. Section 5146 of the Revised Statutes is hereby amended so as to read as follows:

"SEC. 5146. Every director must during his whole term of service be a citizen of the United States, and at least three-fourths of the directors must have resided in the State, Territory, or District in which the association is located for at least one year immediately preceding their election, and must be residents therein during their continuance in office; and for not less than three months next preceding the date of his election each director must be and he must remain during his entire term of office the registered and sole beneficial owner and holder, in his own name and right, and free from debt or claim, of at least one per centum of the then outstanding capital stock of the association of which he is a director: *Provided, however,* That if the capital of the bank shall not exceed one hundred thousand dollars he must own in his own beneficial right and interest not less than ten shares of such capital stock. The directors may be voted and paid such fees, salaries, or compensation, for their services as shall from time to time be prescribed by the stockholders."

SEC. 10. No officer or director of a national bank shall receive or be beneficiary either directly or indirectly, of any fee, brokerage, commission, gratuity or other consideration or inducement other than the salary or other compensation that shall have been voted him by the stockholders, for or on account of any loan, purchase, sale, payment, exchange, or transaction made by or on behalf of a national bank of which he is such officer or director.

SEC. 11. No officer or director of a national bank shall be an officer or director of any other bank or of any trust company or other financial or other corporation or institution, whether organized under State or Federal law, that is authorized to receive money on deposit or that is engaged in the business of loaning money on collateral or in buying and selling securities except as in this section provided; and no person shall be an officer or director of any national bank who is a private banker or a member of a firm or partnership of bankers that is engaged in the business of receiving deposits: *Provided,* That such bank, trust company, financial institution, banker, or firm of bankers is located at or engaged in business at or in the same city, town, or village as that in which such national bank is located or engaged in business: *Provided further,* That a director of a national bank or a partner of such director may be an officer or director of not more than one trust company organized by the laws of the State in which such national bank is engaged in business and doing business at the same place.

SEC. 12. No national bank shall lend or advance money or credit or purchase or discount any promissory note, draft, bill of exchange or other evidence of debt bearing the signature or indorsement of any of its officers or of any partnership of which such officer is a member, directly or indirectly, or of any corporation in which such officer owns or has a beneficial interest of upward of ten per centum of the capital stock, or lend or advance money or credit to, for or on behalf of any such officer or of any such partnership or corporation, or purchase any security from any such officer or of or from any partnership or corporation of which such officer is a member or in which he is financially interested as herein specified or of any corporation of which any of its officers is an officer at the time of such transaction.

SEC. 13. No national bank shall lend or advance money or credit or purchase or discount any promissory note, draft, bill of exchange, or other evidence of debt bearing the signature or indorsement of any director or for his benefit, or purchase any bond, note, debenture, or other security or obligation, or make or enter into any contract or agreement involving a profit or the payment of money or other valuable consideration to any director or to any firm of which such director is a partner or in which he is interested or of any corporation of which such director owns or controls, directly or indirectly, upward of ten per centum of the share capital, unless and until previous written notice of such intended transaction shall have been given to all the directors, nor unless action thereon shall first have been taken at a meeting of the board of directors duly called for the purpose and all the facts and details of the transaction have been first recorded on the minutes of such meeting.

SEC. 14. No officer or director of any national bank, and no firm or partnership of which any such officer or director is a member, shall be directly or indirectly beneficially interested or concerned in any guaranty, underwriting, syndicate, or other

agreement or arrangement or understanding involving the purchase or sale of any securities which shall be purchased, sold or dealt in by such bank and no such bank and no officer or director thereof shall knowingly purchase or sell or assent to the purchase or sale of any such securities.

SEC. 15. No national bank shall engage in or be or become directly or indirectly interested in or connected with any promotion, guaranty, or underwriting involving the purchase, sale, or disposition of the securities of any corporation, or make any agreement with respect thereto, or shall either alone or jointly with others offer any securities for sale by public advertisement or otherwise, or make or cause to be made or issued any statement or representation with respect to any such security: *Provided, however,* That nothing herein contained shall be construed to interfere with the disposition by such bank at public or private sale of securities or interests therein that may have been acquired by it as security for loans of money made by such bank or to which it may have derived title in the current conduct of its business of loaning money on collateral.

SEC. 16. No shares of stock of any national bank shall be held by any other bank or by any trust company or other financial institution or corporation or in trust for any such bank, trust company, or other financial institution or corporation that is authorized to receive deposits of money or to engage in the general business of banking or to buy and sell securities.

SEC. 17. It shall be unlawful for any officer or director of a national bank to be an officer or director of any other bank or other financial corporation that has a substantially identical management, officers, or directors as such bank or other financial corporation or of any corporation the shares of which can be bought or sold only in conjunction with the shares of such national bank or that is so related to the bank or its officers by identity or similarity of interest or management as to amount in effect to a control by either of such corporations or of the operations or management thereof by the other or by the interests that control, operate, or manage the other.

SEC. 18. That any national bank and any officer or director or other person violating any of the provisions of this act and any officer or director thereof assenting to such violation, shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding \$5,000; and any such officer, director, or other person may also be imprisoned not exceeding two years.

SEC. 19. That this act shall take effect six months from and after its passage.

**Second.** A bill to prevent the use of the mails and of the telegraph and telephone in furtherance of fraudulent and harmful transactions on stock exchanges, consisting of 6 sections, as follows:

A BILL To prevent the use of the mails and of the telegraph and telephone in furtherance of fraudulent and harmful transactions on stock exchanges.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SECTION 1. No letter, package, circular, pamphlet, post card, newspaper, or other form of printed or written statement, or partly printed and partly written, and no quotation of any prices or any other advices, report, information, or representation concerning transactions in securities sold or offered for sale, or executed or to be executed, or that are listed or quoted on any stock exchange, and no statement, account, or memorandum of purchase or sale or other information, notice, or demand regarding any purchase or sale upon or on any stock exchange of any security shall be delivered or deposited or carried in the mail or at or through any post office or branch thereof or by any letter carrier, unless such exchange has been incorporated under the laws of the State or Territory at which its business is conducted, or unless the charter and by-laws of such exchange or the law under which it is organized shall contain regulations and prohibitions satisfactory to the Postmaster General safeguarding the transactions of such exchange, the character of the securities dealt in thereon, the genuineness of the quotations thereof, and all other information concerning such transactions that is to be carried through the mails and by telegraph and telephone beyond the limits of the State of the organization of said exchange against fraud and deceit in the following particulars:

(a) Requiring that before the securities of any corporation shall be listed, quoted, or dealt in upon any such exchange there shall be filed with the secretary of the exchange a statement formally approved by resolution of the board of directors of such corporation and verified by the oath of an officer thereof, before a person authorized to administer oaths at the place where the same is taken, setting forth, separately and in detail—

(1) The nature, amount, and value of the tangible and other property, assets, and effects of such corporation, its actual and contingent liabilities and obligations, the

volume of its business and net earnings year by year for at least three years next preceding the filing of such statement or for such lesser time as the corporation shall have been engaged in business; and a like statement with respect to every subsidiary or controlled corporation in which it is interested; and

(2) A copy of every contract or agreement in writing and a full statement and description of the terms of every contract, agreement, or understanding in parol connected with or affecting the authorization, issue, sale, or disposition of the securities admitted or sought to be admitted to the official list of said exchange and quoted and dealt in thereon, accompanied by a full disclosure and recital of all fees, profits, charges, commissions, or compensation paid or agreed to be paid or reserved to bankers, brokers, middlemen, or others in connection with the authorization, issue, sale, or disposition or intended sale or disposition of such securities and of the net amount realized or to be realized by such corporation therefor.

(b) Requiring that every such corporation shall, so long as any of its securities are listed on said exchange, file at least once in each year, and as much oftener as the regulations of such exchange may require, with the secretary of said exchange and with the Postmaster General for public inspection and use, a detailed statement of its gross receipts and expenses, its net earnings, and a particular statement of any and all agreements and transactions made or entered into, directly or indirectly, between the corporation and any of its officers or directors, or with any partnership, joint association, or corporation in which any such officer or director is interested and of the profits, emoluments, salaries, commissions, or other compensation or benefits derived, assured, or agreed to be paid to said officers or directors or to any such partnership, joint association, or corporation in which such officer or director is interested.

(c) That no outstanding securities having been so listed, quoted, and dealt in on said exchange shall be removed or stricken from the list or denied quotation thereon so long as any part of the issue of such securities originally admitted to such list is outstanding, except after due notice to all security holders affected by the proposed action, to be given in such manner as the charter and by-laws of the exchange, as approved by the Postmaster General, shall provide, subject to review by any court of competent jurisdiction.

(d) That the manipulation of securities and of the prices and transactions therein and all fictitious purchases and sales of securities and what are known as "matched orders" and "wash sales" thereof and all other dealings or transactions that are intended or the effect of which is to deceive or mislead the public shall be prohibited by regulations that shall be approved by the Postmaster General.

(e) That the members of such exchange shall be forbidden under penalty of expulsion and under such other penalties as may be prescribed by the law incorporating said exchange or the regulations thereof from hypothecating any security belonging to their customers or others for any amount in excess of the sum at the time owing such members thereon or from entering into any arrangement or agreement with such customer or others for such use of their securities.

(f) That the regulations of said exchange shall forbid its members, under penalty of expulsion and such other penalties as may be prescribed by the articles incorporating the exchange or otherwise, from lending securities pledged with them or from making any agreement with their customers with respect thereto.

(g) That the members of such exchange shall be required to keep full and accurate books of account of all transactions conducted by them upon such exchange, which shall contain the actual names and transactions of all their customers and the serial numbers of all securities or of the certificates representing the same that have been purchased or sold by them; that such books and all the records of the members of such exchange shall be at all times open to the inspection of the officers of the said exchange or of such examiners or other persons as they may designate for that purpose and to the Postmaster General and such persons as he may from time to time designate to make such examinations.

(h) That no orders, direction, or offer to purchase the securities of any corporation or joint-stock company shall be accepted or executed by any member of such exchange unless the broker shall at the time of such order or previously thereto have received from the customer a partial payment in cash of not less than twenty per cent of the market price of such stock on the day of purchase;

(i) That no securities of any corporation shall be listed, quoted, or dealt in on said exchange unless the charter or by-laws thereof contains express prohibition against the sale by any officer or director of any security of which he is not the owner at the time of such sale or the purchase or sale directly or indirectly of any security of any such corporation or any interest therein, either alone or jointly with others, unless or until previous written notice of such intended action shall have been given to the directors and entered upon the minutes of the meeting, nor unless all such transactions

shall be reported in writing to the secretary within five days after the same are made and entered upon the minutes of the next succeeding meeting of the board of directors.

SEC. 2. The Postmaster General may, upon evidence satisfactory to him that any letter, package, circular, pamphlet, post card, newspaper, or other form of printed or written statement, or partly printed or partly written, contains an order or statement or any quotation of prices or any other advices, report, or information concerning transactions in securities sold or offered for sale or executed or to be executed on any stock exchange which shall not conform to the requirements specified in section 1 hereof or that have failed to enforce such requirements shall make a written finding to that effect and shall thereupon instruct the postmaster not to receive for transmission in the mails any such letter, package, circular, pamphlet, postcard, newspaper, or other of printed or written statement, or partly printed or partly written, and at the same time shall transmit a copy of such finding to the principal office of every telegraph and telephone company and every national bank doing business in the United States or any Territory thereof or any of its possessions. Nothing in this section contained shall be so construed as to authorize any postmaster or other person to open any letter, package, circular pamphlet, post card, newspaper, or other form of printed or written statement, or partly printed or partly written, not addressed to himself.

SEC. 3. Any person who shall knowingly deposit or cause to be deposited in the mails, or who shall knowingly send or cause to be sent by mail any letter, package, circular, pamphlet, post card, newspaper, or other form of printed or written statement, or partly printed or partly written, concerning transactions in securities sold or offered for sale, or executed or to be executed, on any stock exchange, which shall not conform to the requirements of section one hereof, or who shall knowingly deliver for transmission or send or transmit by telegraph or telephone in any State or Territory of the United States or from the District of Columbia to any other State or Territory of the United States or to the District of Columbia any order or statement or any quotation of prices or any other advices, report, or information concerning transactions in securities sold or offered for sale or executed or to be executed on any stock exchange which shall not conform to the requirements specified in section one hereof shall be deemed guilty of a misdemeanor; and, on conviction, shall be fined not more than \$1,000 or imprisoned not more than two years or both for the first offense; and for any subsequent offense shall be imprisoned not more than five years.

SEC. 4. Any telegraph or telephone company which shall knowingly send or transmit or furnish facilities for sending and transmitting any order or statement or any quotation of prices or any other advice, report, or information concerning transactions in securities sold or offered for sale or executed or to be executed on any stock exchange which shall not conform to the requirements specified in section one hereof or that shall fail to conform to any order issued by the Postmaster General pursuant to section two of this act shall be deemed guilty of a misdemeanor; and, upon conviction, shall be fined \$1,000 for the first offense and for any subsequent offense shall be fined \$2,500; and any officer or director who shall knowingly permit or suffer such order or statement or any quotation of prices or any other advices, report, or information concerning transactions in securities sold or offered for sale or executed or to be executed on any stock exchange which shall not conform to the requirements specified in section one hereof or that shall have been proceeded against as provided by section two hereof to be sent or transmitted or facilities therefor to be furnished shall be deemed guilty of a misdemeanor; and, upon conviction, shall be fined \$1,000 or imprisoned not more than two years or both for the first offense, and for any subsequent offense shall be fined \$2,500 or imprisoned not more than five years or both.

#### Sec. 5. Definitions.

1. Within the meaning of this act a "stock exchange" is a market or meeting place controlled by rules, on which only members are permitted to deal with one another on their own behalf or for their customers, and at which securities of corporations are bought and sold or offered for purchase and sale.

2. The term "security" or "securities" as used in this act shall include every bond, note, debenture, and other obligation and every share of stock or receipt or certificate therefor, and every certificate or beneficial interest or right of participation in the bonds, notes, debentures, or other obligations, or in the shares of stock or property of any corporation.

3. "Manipulation of securities" is hereby defined as the act or acts of any person, partnership, joint association, or corporation, either alone or by agreement, arrangement, or understanding, or in combination or participation with others or with another, directly or indirectly, in—

(a) Aiding, abetting, promoting, or engaging in or becoming pecuniarily interested in the actual or pretended purchase or sale, or both, or in executing or assisting in executing an order or orders for the actual or pretended purchase or sale, or both, of any security of any corporation that is listed or dealt in on any stock exchange or with

a series or succession of actual or pretended purchases and sales, or both, either for the purpose of giving to such transactions or to the market in such securities, or to the public, a false or misleading appearance of activity, or to artificially depress, inflate, or otherwise influence the market price thereof in order to sell or purchase or procure the sale or purchase of any of such securities of such issue, or to attract public attention to such securities to induce the purchase or sale thereof by others.

(b) Giving or causing to be given or in knowingly executing or causing to be executed upon any such exchange, directly or indirectly, or by or through any member thereof, any order, commission, or direction for the simultaneous or substantially simultaneous purchase and sale of any such security by or for or on behalf of the same persons or interests, whether accomplished by means of genuine or fictitious purchases or sales, or both.

4. A "matched order" and a "wash sale" are hereby separately defined as a sale or offer for sale or the pretended sale or offering for sale, directly or indirectly, of any security accompanied by or in conjunction with the purchase or pretended purchase or offer to purchase, directly or indirectly, the same security; or the pretended sale or purchase or attempt to sell or purchase any security with the purpose or intent of recording or procuring the recording of a price or quotation therefor.

SEC. 6. This act shall take effect six months after its passage.

These bills embody all the foregoing recommendations in relation to clearing houses and stock exchanges and such of the recommendations in relation to the concentration of control of money and credit as concern or may be carried into effect through the national banks.

There was not time to frame bills to carry into effect the remaining recommendations.

A. P. PUJO, *Chairman*.  
WM. G. BROWN.  
R. L. DOUGHTON.  
H. D. STEPHENS.  
J. A. DAUGHERTY.  
JAMES F. BYRNES.  
GEO. A. NEELEY.

of  
en  
of

COPY BOUND CLOS

## APPENDIX A.

[H. Res. 429, Sixty-second Congress, second session.]

### IN THE HOUSE OF REPRESENTATIVES.

*February 24, 1912.*

Mr. Henry of Texas, from the Committee on Rules, reported the following resolution; which was agreed to:

*Resolved*, That in order to obtain full and complete information of the banking and currency conditions of the United States for the purpose of determining what legislation is needed, the Committee on Banking and Currency is authorized and directed to make a full investigation thereof, including all matters touched upon in House Resolution Numbered Four hundred and five within the jurisdiction of said committee; and the said committee is authorized, as a whole or by subcommittee, to sit during sessions of the House and the recess of Congress, to compel the attendance of witnesses, to send for persons and papers, to administer oaths to witnesses, and to employ experts, counsel, accountants, and clerical and other assistants.

The Speaker shall have authority to sign and the Clerk to attest subpoenas during the sessions or recess of Congress.

## APPENDIX B.

[H. Res. 504, Sixty-second Congress, second session.]

### IN THE HOUSE OF REPRESENTATIVES,

*April 22, 1912.*

Mr. Pujo submitted the following resolution; which was referred to the Committee on Rules and ordered to be printed:

Whereas H. Res. 429 was heretofore passed for the purpose of directing the conduct of an investigation into certain of the matters covered by this resolution, and it has since been ascertained that said H. Res. 429 is insufficient in the delegation of its powers to permit of the scope of inquiry which is believed to be necessary as a basis for remedial legislation on the subjects covered by this resolution:

*Resolved*, That H. Res. 429 is hereby amended so that the same shall read as follows:

"Whereas legislation is now pending involving important changes in our national currency and monetary system and vitally affecting our national banks and other financial institutions, and various bills have also been introduced, and are now under consideration by Congress having for their purpose the amendment and supplementing of the Act approved July second, eighteen hundred and ninety, entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies,' generally known as the Federal antitrust law; and

"Whereas bills are also pending or under consideration to regulate industrial corporations engaged in interstate commerce through Federal incorporation, supervision, and otherwise, and legislation is believed to be necessary to further control the incorporation, management, and financial operations of railroad corporations that are now subject to the jurisdiction of the Interstate Commerce Commission, including, among other things, the regulation of the issue and sale of their securities and the protection of minority stockholders; and

"Whereas it has been charged, and there is reason to believe, that the management of the finances of many of the great industrial and railroad corporations of the country engaged in interstate commerce is rapidly concentrating in the hands of a few groups of financiers in the city of New York and their associates in New York and other cities,

and that these groups, by reason of their control over the funds of such corporations and the power to dictate the depositories of such funds, and by reason of their relations with the great life insurance companies with headquarters in New York City, and by other means, have secured domination over many of the leading national banks and other moneyed institutions and life insurance companies in the city of New York and in other cities to which they direct such patronage and over the vast deposits of money and of the other assets of such institutions, thus enabling them and their associates to direct the operations of the latter in the use of the money belonging to their depositors and the stockholders and in the purchase and sale of securities and loans of money by such banks and other moneyed institutions and life insurance companies, and that these institutions and their funds are being used to further the enterprises and increase the profits of these groups of individuals from such transactions and to augment their power over the finances of the country and to control the money, exchange, security, and commodity markets, and prevent competition with the enterprises in which they are interested, to the detriment of interstate commerce and of the general public; and

"Whereas it has been further charged and is generally believed that these same groups of financiers have so intrenched themselves in their control of the aforesaid financial and other institutions and otherwise in the direction of the finances of the country that they are thereby enabled to use the funds and property of the great national banks and other moneyed corporations in the leading money centers to control the security and commodity markets; to regulate the interest rates for money; to create, avert, and compose panics; to dominate the New York Stock Exchange and the various clearing-house associations throughout the country, and through such associations and by reason of their aforesaid control over the aforesaid railroads, industrial corporations, and moneyed institutions, and others, and in other ways resulting therefrom, have wielded a power over the business, commerce, credits, and finances of the country that is despotic and perilous and is daily becoming more perilous to the public welfare; and

"Whereas the national banks and other moneyed institutions controlled as aforesaid are charged to have been, and to be, engaged in the promotion, underwriting, and exploitation of speculative enterprises and in the purchase and sale of securities of such enterprises, and in acquiring, directly or indirectly, stocks of other banking institutions and absorbing competitors and in using their corporate funds and credit for such purposes, either alone or in conjunction with those by whom they are controlled; and

"Whereas it is deemed advisable to gather the facts bearing on the aforesaid conditions and charges or in any way relating thereto or to any of the subjects above mentioned as a basis for remedial and other legislative purposes: Therefore be it

"Resolved, That the Members now or hereafter constituting the Committee on Banking and Currency, by a subcommittee consisting of the eleven members thereof already appointed under H. Res. 429 and by such substituted members as may be from time to time selected from the members of the said committee to fill vacancies in the subcommittee, is authorized and directed—

"First. To fully investigate and inquire into each and all of the above-recited matters and into all matters and subjects connected with or appurtenant to or bearing upon the same.

"Second. To fully inquire into and investigate among other things whether and to what extent—

"(a) Individuals, firms, national banks, and other moneyed corporations are engaged in or connected with the management of financial affairs of interstate railroad or industrial corporations, or life insurance companies, and what potential or other power they have or exercise over such corporations, and how and to what uses the bankable funds of such interstate railroad or industrial or other corporations are applied.

"(b) The marketing of the securities that have been from time to time issued by interstate railroad and industrial corporations has been by competitive bidding or otherwise.

"(c) Changes have been procured in the general laws of any of the States under which such interstate corporations are organized in the interest or upon the procurement of such corporations, and for what reason and by what methods and influences such changes were accomplished.

"(d) Individuals, firms, national banks, and other moneyed corporations interested in or in anywise connected with such interstate corporations are enabled by reason of their relations or connection with other interstate corporations or with other individuals, firms, national banks, moneyed corporations, or life insurance companies, or otherwise to prevent or suppress competition in the interest of such interstate corporations, or to protect or assist the latter in preventing or suppressing competition.

"(e) Such interstate corporations and the individuals, firms, national banks, and moneyed corporations are mutually benefited and protected against competition and otherwise by the relations existing between them.

"(f) National banks and other moneyed and other institutions are directly or indirectly owned, dominated, or controlled through their directors or through stock ownership, official management, patronage, or otherwise by the same persons, interests, groups of individuals, or corporations that are also directly or indirectly interested in other national banks or moneyed or other corporations located in the same city and in interstate corporations that are customers of said national banks and other moneyed corporations.

"(g) The same individuals are officers or directors of, or were or are directly or indirectly interested in or dominate or control, or heretofore dominated or controlled, in any way, more than one national bank or other moneyed corporation.

"(h) The funds or credit of national banks and other moneyed corporations or life insurance companies are or have been used or employed other than in making current loans to merchants or on commercial paper, by whose influence or direction such funds or credits were so used or employed, and particularly whether and to what extent such funds are or have been employed: First, in the purchase of securities from bankers or others in any way interested in or connected with such corporations; second, in the guaranty or underwriting of securities or syndicate transactions, either alone or in conjunction with others; third, in loans on notes secured by bonds, stocks, or other collateral; fourth, in loans on or purchases of stocks of other banks or of any trust or investment company or financial or moneyed corporation; and, fifth, in any form of investment alone or in joint account with others.

"(i) Any national bank or other moneyed corporation, whether directly or indirectly or whether through or by means of another corporation having substantially the same officers, management, control, or stockholders, or with stock paid for by the dividends of a parent or affiliated company, and, whether alone or with others, has acted as an issuing house or in offering securities to the public or to investors by prospectus, advertisement, solicitation, or otherwise, or has speculated or is speculating in stocks, and if so, the nature of all such transactions and the profits and all other details thereof.

"(j) The management and operations of the New York Stock Exchange and the New York Clearing House Association are, or may be, directly or indirectly, dominated, controlled, or otherwise affected by any individuals or groups of individuals who control or are influential in directing the use or deposit of the funds of national banks in the city of New York, or of interstate railway or industrial corporations, or life insurance companies, and the relations that the New York Stock Exchange and the New York Clearing House bear to such individuals and groups of individuals and to their financial transactions and to our commercial and financial systems and to interstate and foreign commerce.

"(k) Any individual, firm, or corporation, or any one or more groups of such individuals, firms, or corporations, may or can affect the security markets of the country through the New York Stock Exchange, or can create, avert, or compose panics by the control of the use and disposition of moneys in the banks and other moneyed or other corporations that are controlled by such individual, firm, or corporation, or by other means.

"(l) There is any connection between the relations of bankers, banking firms, and their associates to the railroad and industrial corporations engaged in interstate commerce, and the relations of such bankers, banking firms, and their associates to the national banks and other moneyed or other corporations, and the relations of any of these interests to any of the others that operate to protect such interstate corporations against competition or are or may be used for that purpose.

"Third. To investigate, find, and report the facts bearing upon the payment of political contributions to national campaign funds by or in the interest of national banks and interstate railroad and industrial corporations, and by all persons who are officers or directors thereof, and by other persons who are directly or indirectly in control of or connected with such corporations, together with the amounts of such contributions and the circumstances attending the same.

"Fourth. To investigate the methods of financing the cash requirement of interstate corporations and of marketing their securities, and the relations of national banks and others to such transactions.

"Fifth. Said committee as a whole or by subcommittee is authorized to sit during the sessions of the House and during the recess of Congress. Its hearings shall be open to the public. The committee as a whole or by subcommittee is authorized to hold its meetings both during the sessions of Congress and throughout the recesses and adjournment thereof and in such cities and places in the United States as it may

from time to time designate; to employ counsel, experts, accountants, bookkeepers, clerical and other assistants; may summon and compel the attendance of witnesses; may send for persons and papers; and administer oaths to witnesses. The Comptroller of the Currency, the Secretary of the Treasury, and the Commissioner of the Bureau of Corporations, and their respective assistants and subordinates, are hereby respectively directed to comply with all directions of the committee for assistance in its labors, to place at the service of the committee all the data and records of their respective departments, to procure for the committee from time to time such information as is subject to their control or inspection, and to allow the use of their assistants for the making of such investigations with respect to corporations under their respective jurisdictions as the committee or any subcommittee may from time to time request.

"No person shall be excused from giving testimony or from answering any question or from otherwise disclosing any fact within his knowledge as an individual or as an officer or director of a corporation, or otherwise, or from producing any book, paper, or document on the ground that the giving of such testimony or the production of such book, paper, or document would tend to incriminate him, or for any other reason; but every person so testifying shall be granted immunity from prosecution with respect to any matter or thing concerning which he may be interrogated and as to which he shall truthfully make answer under oath upon such investigation. The Speaker shall have authority to sign and the Clerk to attest subpoenas during the recess of Congress."

### APPENDIX C.

#### COMMITTEE ON BANKING AND CURRENCY, HOUSE OF REPRESENTATIVES, Washington, D. C.

**GENTLEMEN:** In pursuance of the provisions of resolutions H. R. 405 and 429, relating to pending legislation affecting the national currency and monetary system, and in order to obtain full and complete information for the purpose of determining what legislation is needed, the Committee on Banking and Currency as a whole or by subcommittee is authorized and directed to make full investigation thereof, to sit during the sessions of the House and the recess of Congress, to compel the attendance of witnesses, to send for persons and papers, administer oaths to witnesses, and to employ experts, counsel, accountants, and clerical and other assistants.

In furtherance of this investigation you are respectfully requested to compile from the records of your bank as appears therein at the close of business on April 30, 1912, and promptly transmit to the Committee on Banking and Currency on the inclosures, the statistical and general information indicated.

The importance and value of the information requested make it necessary that the reports submitted by the banks be complete, accurate, for a uniform date, and promptly submitted. If the blanks do not contain sufficient space for the listing of all items, additional sheets of the same size should be used and attached to the proper schedules. The report should be signed and acknowledged by the president, cashier, or treasurer, and attested by the signature of three directors.

An addressed postage-free envelope is inclosed for the transmission of your report.

Respectfully,

A. P. PUJO,

*Chairman Committee on Banking and Currency.*

## 179

NAME OF BANK.....  
Location.....

*Stocks, bonds, and other securities owned, as at the close of business April 30, 1912.*

[The total of the items listed hereunder should agree with Item No. 3 on the balance sheet.]

[illegible]NAME OF BANK.....  
Location.....

*Securities purchased from officers, etc., as at the close of business April 30, 1912.*

[The items listed hereunder should also be included in Schedule A.]

[illegible]



## 181

NAME OF BANK.....

Location.....

*Due to and from banks as at the close of business Apr. 30, 1912.*

[The total of the items listed hereunder should agree with item No. 11 on the balance sheet.]

[illegible]

[The total of the items listed hereunder should agree with item No. 6 on the balance sheet.]

[illegible]

COMMITTEE ON BANKING AND CURRENCY.

House of Representatives

NAME OF BANK .....

Location .....

### SCHEDULE "F."

*Miscellaneous resources and liabilities as at the close of business April 30, 1912.*

MISCELLANEOUS RESOURCES.

[The total of the items listed hereunder should agree with item No. 8 on the balance sheet.]

[illegible]

## MISCELLANEOUS LIABILITIES.

[The total of the items listed hereunder should agree with item No. 15 on the balance sheet.]

[illegible]

*Officers, directors, and stockholders—Their stock holdings and loans.*

[illegible]

COMMITTEE ON BANKING AND CURRENCY,  
House of Representatives.

NAME OF BANK.....  
Location.....

## SCHEDULE "H."

## A. JOINT OCCUPANCY:

If another banking institution occupies the same office—

1. Title of joint occupant.....
2. Is it controlled by or does it control this bank?.....
3. State manner and extent of control.....
4. Has it practically the same officers and clerks?.....

## B. AFFILIATED FINANCIAL INSTITUTIONS:

1. What institutions are affiliated with this bank?.....
2. Is stock of affiliated institutions owned by stockholders of this bank?.....
  - a. If as a corporation, to what extent?.....
  - b. If as individuals, to what extent?.....
3. Does transfer of one stock convey ownership of the other?.....
4. Is stock held in trust for benefit of stockholders of this bank?.....

C. How many banks have been merged in your present organization, either directly or indirectly, by the dissolution of other banks and the purchase of their business and assets? Give the names of these absorbed banks, their capital stocks, and the dates they were taken over.....

I, ....., of the above-named bank, do solemnly swear  
(Cashier, Treasurer, or President.)  
that the above statement is true, and that the schedules attached fully and correctly  
represent the true state of the several matters therein contained, to the best of my  
knowledge and belief.

Correct—Attest:

Cashier.

Directors

STATE OF.....  
County of.....

Sworn to and subscribed before me this ..... day of ....., 1912,  
and I certify that I am not an officer or a director of this bank.

[SEAL]

Notary Public.

COMMITTEE ON BANKING AND CURRENCY,  
House of Representatives.

Name of bank.....

Location.....

To indicate the character of your bank put check mark (✓) opposite the appropriate class below:

- National bank.  
State bank.  
Mutual Savings Bank.  
Stock savings bank.  
Private bank.  
Loan and trust company.

Balance sheet as at the close of business Apr. 30, 1912.

Resources.				Liabilities.			
1. Loans and discounts:				9. Capital stock paid in.....			
(a) Secured by real estate.....				10. Surplus and undivided profits.....			
(b) Secured by other col- lateral.....				11. Due to banks (Schedule E).....			
(c) All other loans.....				12. Individual deposits.....			
2. Overdrafts.....				13. Government deposits.....			
3. Securities owned (Schedule A).....				14. Rediscouts.....			
4. Banking house, furniture, and fixtures.....							
5. Other real estate owned.....							
6. Due from banks (Schedule E).....							
7. Cash actually in bank.....							
8. Miscellaneous resources (Sched- ule F).....				15. Miscellaneous liabilities (Schedule F).....			
Total resources.....				Total liabilities.....			

## CAPITAL.

[Show all increases and reductions in capital by dates and amounts.]

Dates.	Original and increase.				Decrease and present.			
Capital at incorporation.....								
.....								
.....								
.....								
Present capital.....								
Total.....								

## INSTRUCTIONS.

1. Loans and discounts: (a) Secured by real estate. This item should include mortgages owned.

3. Securities owned: This item should include premiums.

5. Other real estate owned: Under this item should be made to appear ground rents owned.

7. Cash actually in bank: Entries opposite hereto include:

- Gold coin,
- Gold certificates,
- Silver dollars,
- Silver certificates,
- Subsidiary and minor coins,
- Legal tender notes,
- National bank notes,
- Other actual cash or currency.

8. Miscellaneous resources: All items appearing in the general accounts of resources of this bank and not otherwise provided for should be included in this item and the same listed as indicated in Schedule "F." Some of the items which may appear are as follows:

- Checks and other cash items,
- Exchange for clearing house,
- Transit and suspense accounts.

10. Surplus and undivided profits: The amount set opposite hereto should include accrued interest and any other amount set aside for specific purposes, less current expenses, interest, and taxes paid. In such States where provisions are made for guaranty funds similar to those for national bank surplus, such funds should appear hereunder.

12. All deposits, except deposits of the Federal Government, be they time, demand, checking, or saving accounts, should be included hereunder.

15. Miscellaneous liabilities: All items appearing in the general accounts of liabilities of this bank and not otherwise provided for should be included in this item and same listed as indicated in Schedule "F." Some of the items which may appear are as follows:

- Certified checks,
- Cashier's checks,
- Money borrowed, etc.

And in general: When a general account standing on the books of this bank differs merely in terminology from those set up in the above balance sheet, the amount of such account should be carried to its proper place, if the accounts can be positively identified with the items on which report is specifically requested.

# APPENDIX D.

Table showing shares of common stock of the Reading Co. sold on New York Stock Exchange, shares transferred on company's books, and shares listed on exchange each month 1906 to 1912, and also range of prices each month.

	January.	February.	March.	April.	May.	June.	July.	August.	September.	October.	November.	December.	Total.
<b>1906.</b>													
Shares sold.....	3,127,710	2,177,320	2,582,640	2,712,160	4,356,350	3,398,480	1,938,900	3,000,900	6,533,220	4,287,250	4,453,630	5,116,280	43,764,940
Shares transferred.....	604,734	162,247	165,112	166,813	261,206	282,747	463,307	148,063	206,514	265,222	162,813	237,906	3,150,773
Shares listed.....	1,400,000	1,344	125	120	112	129	116	123	136	138	138	129	.....
Low price.....	134	134	137	140	142	143	132	144	156	153	150	152	.....
High price.....	164	144	137	140	142	143	132	144	156	153	150	152	.....
<b>1907.</b>													
Shares sold.....	4,570,475	3,911,615	5,535,090	3,529,220	3,835,800	2,487,690	2,131,400	2,727,720	2,143,550	2,494,720	1,475,331	3,048,780	38,141,371
Shares transferred.....	547,340	154,682	228,382	203,978	293,321	182,095	491,230	167,414	149,562	157,709	136,500	106,725	2,734,298
Shares listed.....	1,400,000	119	91	103	96	97	100	85	90	70	72	87	.....
Low price.....	110	112	123	114	113	107	108	103	108	93	90	97	.....
High price.....	130	126	123	114	113	107	108	103	108	93	90	97	.....
<b>1908.</b>													
Shares sold.....	4,055,000	2,448,544	3,464,250	2,311,000	3,983,416	1,882,860	2,111,600	3,204,080	3,655,175	2,336,900	3,132,878	2,879,760	35,165,553
Shares transferred.....	518,608	163,646	179,320	162,933	197,382	235,888	432,410	138,688	197,720	138,278	177,591	208,638	2,708,919
Shares listed.....	1,400,000	92	94	102	107	109	112	121	120	123	131	135	.....
Low price.....	94	103	107	112	119	117	122	130	137	134	141	143	.....
High price.....	111	103	107	112	119	117	122	130	137	134	141	143	.....
<b>1909.</b>													
Shares sold.....	1,497,430	1,595,600	2,251,573	3,321,850	2,974,232	2,490,820	1,472,500	3,251,860	3,423,780	2,036,390	2,640,400	2,015,900	39,342,415
Shares transferred.....	541,807	92,283	134,686	166,742	243,572	208,019	499,094	184,727	196,932	129,476	133,303	331,214	2,861,788
Shares listed.....	1,400,000	118	121	134	143	147	153	155	156	158	160	167	.....
Low price.....	131	134	121	134	143	147	153	155	156	158	160	167	.....
High price.....	144	134	121	134	143	147	153	155	156	158	160	167	.....
<b>1910.</b>													
Shares sold.....	2,838,110	2,918,650	2,454,000	2,027,204	2,219,035	2,967,510	2,549,920	2,225,450	1,898,700	2,023,800	1,911,620	2,242,850	28,278,149
Shares transferred.....	536,933	230,311	186,027	162,067	171,271	210,228	477,562	153,885	129,731	123,469	127,867	173,238	2,672,627
Shares listed.....	1,400,000	153	162	156	153	149	130	124	136	145	147	142	.....
Low price.....	134	153	162	156	153	149	130	124	136	145	147	142	.....
High price.....	171	172	171	166	169	158	147	147	147	150	151	151	.....

See footnote on page 188.

*Table showing shares of common stock of Reading Co. sold on New York Stock Exchange, shares transferred on company's books, and shares listed on exchange each month, 1906 to 1912, and also range of prices each month—Continued.*

	January.	February.	March.	April.	May.	June.	July.	August.	September.	October.	November.	December.	Total.
1911.													
Shares sold.....	2,502,400	2,181,540	1,128,320	890,700	1,845,900	1,443,050	797,920	2,475,110	2,688,715	1,840,490	2,600,850	1,403,500	21,900,525
Shares listed.....	387,680	120,980	107,764	88,535	158,643	164,054	209,470	165,041	144,122	128,095	161,361	180,247	2,084,962
Low price.....	150 $\frac{1}{2}$	152 $\frac{1}{2}$	153 $\frac{1}{2}$	140 $\frac{1}{2}$	154 $\frac{1}{2}$	157 $\frac{1}{2}$	155 $\frac{1}{2}$	130 $\frac{1}{2}$	134	155 $\frac{1}{2}$	130 $\frac{1}{2}$	140 $\frac{1}{2}$	.....
High price.....	158 $\frac{1}{2}$	161 $\frac{1}{2}$	158 $\frac{1}{2}$	157	161 $\frac{1}{2}$	161 $\frac{1}{2}$	160 $\frac{1}{2}$	159	144 $\frac{1}{2}$	141 $\frac{1}{2}$	154 $\frac{1}{2}$	154 $\frac{1}{2}$	.....
1912.													
Shares sold.....	2,232,950	1,590,400	1,083,550	2,536,800	2,385,500	1,245,700	1,025,225	1,273,440	1,546,800	2,680,600	1,523,050	.....	20,054,045
Shares transferred.....	309,596	114,275	132,534	427,320	142,467	140,443	300,454	105,272	84,695	411,103	70,387	.....	2,285,886
Shares listed.....	1,406,184	1,523,123	1,048,148	1,024	167 $\frac{1}{2}$	163 $\frac{1}{2}$	169 $\frac{1}{2}$	167 $\frac{1}{2}$	165 $\frac{1}{2}$	168 $\frac{1}{2}$	.....	.....	.....
Low price.....	120 $\frac{1}{2}$	120 $\frac{1}{2}$	120 $\frac{1}{2}$	121 $\frac{1}{2}$	177 $\frac{1}{2}$	172 $\frac{1}{2}$	168 $\frac{1}{2}$	173 $\frac{1}{2}$	174 $\frac{1}{2}$	178 $\frac{1}{2}$	.....	.....	.....
High price.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....

1 Of this number the Baltimore & Ohio Railroad Co. and the Lake Shore & Michigan Southern Railway Co. have held 400,000 shares during the period covered by this table, leaving only 1,906,000 shares actually subject to sale on the New York Stock Exchange.

Ratio of shares transferred to shares sold—

1906.....	0.072
1907.....	.072
1908.....	.075
1909.....	.078
1910.....	.094
1911.....	.095
1912.....	.114
Whole period.....	.086

Ratio of shares sold to shares listed:

1906.....	31.26
1907.....	27.24
1908.....	25.11
1909.....	20.96
1910.....	20.18
1911.....	14.39
1912.....	22.10
Whole period (yearly average).....	22.10

Ratio of shares sold to shares actually subject to sale (1,000,000):

1906.....	43.86
1907.....	38.14
1908.....	35.17
1909.....	29.34
1910.....	28.28
1911.....	21.90
1912.....	20.05
Whole period (yearly average).....	30.95

Total shares sold for period, 216,544,598.

Total shares transferred for period, 18,592,240.



*Shares of common stock of Reading Co. sold each day of the 13 most active months from 1906 to 1912, inclusive.*

Day of month.	January, 1906.	May, 1906.	June, 1906.	Septem- ber, 1906.	October, 1906.	Novem- ber, 1906.	Decem- ber, 1906.
1.....		158,300	76,600	33,100	466,700	165,300	14,400
2.....	235,800	362,200	24,600		347,600	366,100	
3.....	208,300	174,800			237,500	152,800	124,100
4.....	106,800	280,400	169,900	179,800	176,500		118,700
5.....	55,000	191,500	131,100	157,200	180,500	176,100	223,500
6.....	23,700		80,800	239,200	107,800		172,000
7.....		324,300	126,300	215,700	162,200	288,400	147,500
8.....	90,000	193,200	94,600	80,200		139,600	39,700
9.....	58,200	206,900	73,700		72,500	208,500	
10.....	47,000	87,400		108,700	91,100	90,700	238,600
11.....	47,400	176,900	116,300	145,000	132,400		296,900
12.....	70,100	30,300	91,500	128,400	151,800	251,000	155,000
13.....	26,400		83,000	91,100	72,900	174,300	280,400
14.....		143,500	325,900	548,800		158,600	204,000
15.....	37,200	145,900	255,200	332,600	163,100	227,300	102,600
16.....	136,400	64,000	103,700		72,900	357,900	
17.....	160,400	244,200		419,900	96,000	117,900	239,100
18.....	186,400	129,500	171,500	598,700	64,100		444,700
19.....	200,100	36,800	158,100	559,100	255,500	243,100	521,300
20.....	108,500		16,800	398,200	147,800	172,300	166,200
21.....		52,500	127,900	231,800		183,200	209,900
22.....	220,200	135,800	115,000	89,900	265,000?	195,100	226,500
23.....	178,800	142,400	55,100		167,400	122,700	
24.....	91,500	248,200		377,100	78,300	114,900	273,100
25.....	167,600	334,700	144,000	325,000	162,000		
26.....	154,700	83,700	183,400	300,500	306,200	126,700	175,100
27.....	69,200		181,000	381,100	84,800	163,800	218,500
28.....		158,000	164,000	362,000		114,600	187,600
29.....	151,700	168,100	113,000	247,500	125,800		150,200
30.....	171,200		64,300		29,600	87,100	
31.....	88,700	57,500			115,800		187,300
MONTHLY SUMMARY.							
Shares sold.....	3,127,710	4,356,350	3,398,480	6,533,220	4,287,250	4,453,630	5,116,280
Shares transferred.....	604,734	265,295	282,747	206,514	265,222	162,813	257,906
Shares listed <sup>1</sup> .....	1,400,000						
Low price.....	134½	112	120½	136½	138	138½	129
High price.....	164	142½	145½	156½	155½	150½	152½

<sup>1</sup> Of this number the Baltimore & Ohio Railroad Co. and the Lake Shore & Michigan Southern Railway Co. have held 400,000 shares during the period covered by this table, leaving only 1,000,000 shares actually subject to sale on the New York Stock Exchange.

Shares of common stock of Reading Co. sold each day of the 18 most active months from 1906 to 1912, inclusive—Continued.

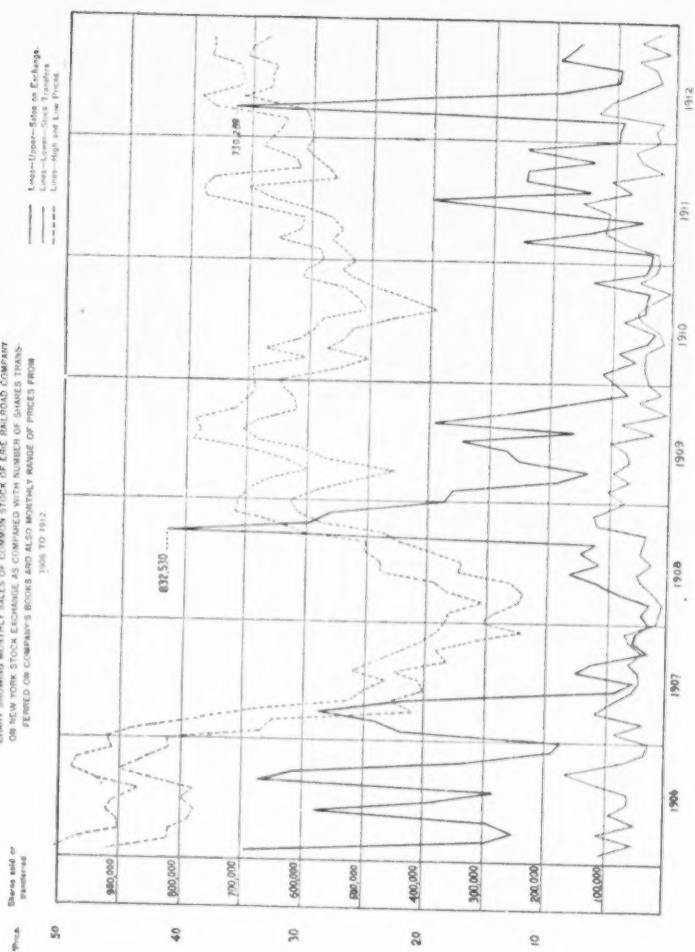
Day of month.	January, 1907.	February, 1907.	March, 1907.	April, 1907.	January, 1908.	May, 1908.
1.....		268,900	443,500	140,200		117,300
2.....	134,700	88,100	140,700	131,900	150,560	66,900
3.....	131,200			183,600	114,700	
4.....	152,000	137,800	354,900	219,500?	68,600	92,900
5.....	142,100	106,000	345,150	228,600		76,600
6.....		139,880	700,000	88,800	141,100	93,900
7.....	160,300	237,520	211,000		147,800	156,500
8.....	174,900	169,400	313,050	130,700	98,200	340,900
9.....	109,600	86,150	81,100	191,500	275,500	110,700
10.....	193,100			142,500	302,000	
11.....	211,600	142,900	240,700	135,100	77,400	153,300
12.....	73,800		140,200	157,300		171,900
13.....		138,150	33,500	123,000	172,600	87,000
14.....	153,500	173,440	324,500		163,600	262,900
15.....	85,300	131,300	192,500	160,500	189,100	258,300
16.....	191,100	59,250	121,700	92,800	255,300	104,860
17.....	118,800			143,000	216,700	
18.....	268,100	166,100	166,500	57,800	124,300	165,500
19.....	223,900	235,900	236,700	75,000		187,100
20.....		106,450	182,600	17,100	180,000	225,756
21.....	400,000	171,980	117,100		312,400	183,800?
22.....	172,800		112,100	191,300	235,800?	227,100
23.....	141,500		107,800	157,100	147,800	136,900
24.....	103,400			245,850	160,800	
25.....	139,800	257,000?	157,600?	1,258?	71,800	159,300
26.....	95,000	256,200	142,000	93,000		148,100
27.....		459,000	232,700	27,100	164,000	179,400
28.....	176,300	371,100	226,000		172,200	165,800
29.....	272,900		113,700	94,100	204,500	65,300
30.....	293,600			176,300	116,550?	
31.....	214,300				111,850	
MONTHLY SUMMARY.						
Shares sold.....	4,570,475	3,911,615	5,835,090	3,529,250	4,055,000	3,983,416
Shares transferred.....	547,349	154,682	228,382	203,978	518,608	197,382
Shares listed.....	1,400,000					
Low price.....	119½	112½	91	103	94½	107½
High price.....	139½	126½	126½	114	111	119½

Table showing shares of common stock of Erie Railroad Co. sold on New York Stock Exchange, shares transferred on company's books, and shares listed on exchange each month, 1906 to 1912, and also range of prices each month.

	January.	February.	March.	April.	May.	June.	July.	August.	September.	October.	November.	December.	Total.
1906.													
Shares sold.....	696,885	293,770	252,540	291,850	579,145	379,270	279,125	672,750	611,950	332,510	186,765	171,550	4,748,000
Shares transferred.....	112,844	57,842	113,292	55,357	95,250	68,549	68,757	178,122	114,854	82,334	46,496	42,396	1,036,033
Shares listed.....	1,123,789	411	411	391	384	40	384	424	45	43	411	411	.....
Low price.....	40 1/2	45 1/2	45 1/2	45 1/2	47	46 1/2	45 1/2	47 1/2	49 1/2	49	46	40 1/2	.....
High price.....	56 1/2	45 1/2	45 1/2	45 1/2	47	46 1/2	45 1/2	47 1/2	49 1/2	49	46	40 1/2	.....
1907.													
Shares sold.....	434,045	280,110	574,785	221,720	83,580	52,970	157,820	128,750	27,890	58,085	53,290	33,086	2,106,181
Shares transferred.....	87,444	48,199	128,049	98,845	56,391	54,437	50,774	66,739	45,869	60,348	72,765	39,648	898,578
Shares listed.....	1,123,789	324	211	221	20	201	221	18	194	164	121	151	.....
Low price.....	33 1/2	37 1/2	34 1/2	29 1/2	25 1/2	23 1/2	26 1/2	24	22	20 1/2	18 1/2	17 1/2	.....
High price.....	44 1/2	37 1/2	34 1/2	29 1/2	25 1/2	23 1/2	26 1/2	24	22	20 1/2	18 1/2	17 1/2	.....
1908.													
Shares sold.....	44,045	33,950	79,590	121,445	167,000	114,585	151,810	125,510	832,530	595,550	557,100	375,790	3,198,915
Shares transferred.....	35,132	24,695	38,549	58,089	62,445	39,225	52,240	45,665	45,662	135,191	138,312	79,874	755,536
Shares listed.....	1,123,789	121	12	131	171	171	19	221	231	291	301	311	.....
Low price.....	14 1/2	15 1/2	17 1/2	19 1/2	23 1/2	21 1/2	29 1/2	25	31 1/2	32 1/2	36	35 1/2	.....
High price.....	17 1/2	15 1/2	17 1/2	19 1/2	23 1/2	21 1/2	29 1/2	25	31 1/2	32 1/2	36	35 1/2	.....
1909.													
Shares sold.....	361,010	186,550	139,825	255,040	275,280	347,390	167,780	389,035	263,535	153,100	72,300	90,685	2,701,220
Shares transferred.....	162,479	64,211	97,873	64,965	75,824	98,994	37,941	76,241	15,272	54,014	34,387	45,920	767,761
Shares listed.....	1,123,789	95 1/2	22 1/2	26 1/2	31	34	35 1/2	34	39 1/2	31 1/2	32	32 1/2	.....
Low price.....	28 1/2	32 1/2	30	32	35 1/2	39	37 1/2	38 1/2	39 1/2	35	34 1/2	34 1/2	.....
High price.....	34 1/2	32 1/2	30	32	35 1/2	39	37 1/2	38 1/2	39 1/2	35	34 1/2	34 1/2	.....
1910.													
Shares sold.....	115,820	61,430	80,290	44,770	29,220	80,785	47,665	46,950	40,080	139,530	45,460	38,575	780,385
Shares transferred.....	51,533	52,044	52,735	25,394	32,290	51,212	56,625	45,119	4,140	56,934	36,000	31,133	495,069
Shares listed.....	1,123,789	25 1/2	28 1/2	27	26 1/2	23 1/2	19 1/2	22	24 1/2	26 1/2	27 1/2	26 1/2	.....
Low price.....	27 1/2	25 1/2	28 1/2	27	26 1/2	23 1/2	19 1/2	22	24 1/2	26 1/2	27 1/2	26 1/2	.....
High price.....	34 1/2	30 1/2	33 1/2	31 1/2	29 1/2	28 1/2	25 1/2	26 1/2	27 1/2	31	30 1/2	29 1/2	.....



CHART SHOWING MONTHLY SALES OF COMMON STOCK OF ERIE RAILROAD COMPANY  
 ON NEW YORK STOCK EXCHANGE AS COMPARED WITH NUMBER OF SHARES TRANS-  
 FERRED ON COMPANY'S BOOKS DURING MONTHLY RANGE OF PRICES FROM  
 1906 TO 1912



*Shares of common stock of Erie Railroad Co. sold each day of the 13 most active months from 1906 to 1912, inclusive.*

Day of month.	January, 1906.	May, 1906.	August, 1906.	Septem- ber, 1906.	March, 1907.	Septem- ber, 1908.	October, 1908.
1.....		15,300	46,000	2,700	11,600	35,400	2,800
2.....	34,400	21,600	26,000		2,000	33,000	10,500
3.....	27,500	13,400	25,600			11,400	9,000
4.....	20,700	11,800	7,100			14,700	
5.....	10,200	26,000			26,600		71,700
6.....	15,100		6,800	33,300	33,700		50,600
7.....		22,100	12,400	13,700	39,500		47,400
8.....	29,800	31,100	8,000	53,800	34,800	52,600	63,400
9.....	13,200	15,600	14,100		9,400	91,050	56,700
10.....	12,600	22,500	6,800	58,700		85,400	9,200
11.....	8,500	29,300	2,500?	38,900	16,700	42,750	
12.....	107,300	3,700		25,200	7,700	14,500	27,150
13.....	12,000		4,800	19,900	30,800		14,000
14.....		17,000	12,100	38,400	19,000	24,310	20,200
15.....	58,400	11,600	15,500	23,600	14,800?	36,000	23,700
16.....	31,700	5,000	7,000		9,900	31,600	8,050
17.....	19,000	43,200	32,200	22,100		34,050	5,300
18.....	18,900	10,600	31,600	53,200	14,100	57,400	
19.....	41,800	2,500		32,200	11,100	38,900	7,100
20.....	9,300		62,100	24,100	4,800		9,300
21.....		6,000	58,200	8,400	11,000?	47,800	18,650
22.....	17,600	28,100	20,700	3,600	55,750	44,000	25,250
23.....	19,300	25,700	22,500		12,500	39,630	3,700
24.....	27,600	51,600	19,800	11,400		38,100	4,500
25.....	20,500	74,000	50,100	13,000	33,320	25,800	
26.....	36,300	12,700		5,600	22,600	5,680	8,700
27.....	8,700		42,100	16,300	73,700		11,200
28.....		30,900	30,700?	21,600	15,200	9,900	8,400
29.....	22,400	19,000?	25,900	6,200	14,800	11,100	5,950
30.....	36,000		19,200			6,200	10,700
31.....	15,900	13,200?	13,900				5,000
MONTHLY SUMMARY.							
Shares sold.....	666,885	579,145	672,750	611,950	574,795	852,530	595,550
Shares transferred.....	112,844	95,250	178,122	114,834	128,049	43,692	135,191
Shares listed.....	1,123,789						
Low price.....	40½	38½	42½	45	21½	23½	29½
High price.....	50½	47	47½	49½	54½	31½	32½

Shares of common stock of Erie Railroad Co. sold each day of the 13 most active months from 1906 to 1912, inclusive—Continued.

Day of month.	November, 1908.	December, 1908.	August, 1909.	June, 1911.	March, 1912.	April, 1912.
1.....		5,250		10,200	3,300	10,000
2.....	7,410	5,700	36,800	19,400	15,600	9,850
3.....		4,600	12,710	25,500		13,600
4.....	10,400	20,100	17,200		22,100	9,400
5.....	40,500	7,600	5,600	27,250	35,800	
6.....	47,300		10,500	14,200	26,000	
7.....	19,200	24,700	7,100	30,000	32,900	
8.....		26,200		17,900	11,550	
9.....	42,100	15,300	12,100	30,300	4,100	30,900
10.....	43,200	8,700	8,150	10,800		65,600
11.....	99,300	15,300	14,400		11,800	76,800
12.....	26,100	7,900	21,700	23,200	2,250	39,000
13.....	21,000		14,300	16,500	15,400	7,600
14.....	5,000	39,100	9,000?	9,100	65,800	
15.....		16,400		12,400	97,800	15,800
16.....	22,100	9,420	7,400	5,800	49,000	17,000
17.....	10,050	14,150	8,700	4,400		17,400
18.....	11,300	16,100	10,700		59,000	12,000
19.....	16,670	7,000	18,700	7,950	30,800	4,700
20.....	19,920		10,000	7,100	29,600	1,400
21.....	5,900	26,000	5,600	4,000	18,100	
22.....		11,200		4,700	22,400	8,900
23.....	17,400	20,400	9,700	6,100	5,300	17,300
24.....	16,975	4,900	36,725	12,200		7,300
25.....	23,800		22,300		28,000	6,100
26.....			15,900	13,700	16,000	13,990
27.....	9,020		32,300	25,700	16,600	2,500
28.....	3,000	15,900	4,200	20,000	22,400	
29.....		16,500		8,200	38,300	11,300
30.....	5,900	4,600	9,400	25,900	10,600?	3,600
31.....		3,600	5,300			
MONTHLY SUMMARY.						
Shares sold.....	557,100	375,790	389,035	400,436	730,288	422,750
Shares transferred.....	138,312	79,874	76,241	145,204	133,353	112,250
Shares listed.....	1,123,789					
Low price.....	30½	31½	34	33½	31	30½
High price.....	36	35½	38½	38½	38	39½

Shares of common stock of United States Steel Corporation sold each day of the 18 most active months from 1906 to 1912, inclusive.

Day of month.	August, 1906.	March, 1907.	August, 1909.	Septem- ber, 1909.	October, 1909.	January, 1910.	February, 1910.
1.....	150,000	52,070	.....	94,400	246,065	.....	164,000
2.....	75,000	21,100	76,350	138,000	125,000	.....	209,500
3.....	77,800	.....	100,400	202,765	.....	193,200	454,000
4.....	34,000	123,100	84,000	.....	244,100	274,700	278,800
5.....	.....	140,000	76,000	.....	427,600	243,800	100,500
6.....	96,300	227,750	93,200	.....	628,100	206,000	.....
7.....	84,900	155,400	90,500	157,183	305,400	246,900	333,200
8.....	34,400	316,000	.....	177,300	309,100	102,700	309,300
9.....	42,600	128,600	129,000?	167,200	139,600	.....	220,600
10.....	27,100	.....	73,750	310,700	.....	116,600	188,700
11.....	15,200	179,000	103,400	86,000	300,300	160,200?	154,700
12.....	.....	116,075	127,500	.....	.....	187,700	.....
13.....	70,900	285,400	176,500	126,300	262,550	320,200	.....
14.....	69,800	324,700	127,400	101,800	351,000	270,900	143,600
15.....	21,700	152,100	.....	206,430	419,700	208,200	127,200
16.....	42,100	97,500	139,450	259,700	165,200	.....	98,500
17.....	225,200	.....	180,700	178,500	.....	289,400	139,800
18.....	150,200	165,770	181,800	60,260	290,500	380,100	130,700
19.....	.....	131,300	189,200	.....	228,300	322,600?	85,700
20.....	205,700	82,100	257,200	130,800	292,800	239,800	.....
21.....	135,700	53,700	89,000	210,000	311,640	305,600	106,200
22.....	402,600	79,800	.....	238,300	279,100	267,100	.....
23.....	289,400	87,000	137,900?	162,700	173,200	.....	79,500
24.....	154,400	.....	143,400	119,400	.....	349,400	81,200
25.....	92,400	209,500	208,950	.....	259,650	449,000	137,300
26.....	.....	143,900	197,200	.....	289,800	239,100	41,600
27.....	141,100	118,700	266,800	191,300	277,900	283,900?	.....
28.....	147,500	61,700	113,400	227,500	238,900	196,100	104,100
29.....	149,600	91,400	.....	258,200	212,500	101,900	.....
30.....	87,200	.....	150,700	155,502?	50,400	.....	.....
31.....	54,800	.....	113,700	.....	.....	115,400	.....
MONTHLY SUMMARY.							
Shares sold.....	3,136,598	3,564,805	3,777,615	3,848,690	6,722,779	6,078,415	3,680,260
Shares transferred.....	1,431,228	858,192	890,878	874,479	879,203	752,045	903,603
Shares listed.....	5,084,952	.....	.....	.....	.....	.....	.....
Low price.....	39 1/2	31 1/2	73 1/2	75 1/2	84 1/2	81 1/2	75
High price.....	47 1/2	44 1/2	78 1/2	90 1/2	94 1/2	91	82 1/2

Shares of common stock of United States Steel Corporation sold each day of the 13 most active months from 1906 to 1912, inclusive.

Day of month.	March, 1910.	April, 1910.	June, 1910.	Septem- ber, 1911.	October, 1911.	Novem- ber, 1911.
1.....	134,800	56,900	273,800	53,300	.....	315,000
2.....	217,300	24,000	171,000	.....	164,800	230,000
3.....	190,100	.....	334,300	.....	178,400	140,000
4.....	114,300	84,900	161,200	.....	194,800	57,300
5.....	52,100	125,700	.....	71,000	139,000	.....
6.....	.....	1,440	234,000	56,500	139,700	165,500
7.....	283,000	78,300	244,000	56,500	117,600	.....
8.....	224,000	181,700	207,410	118,950	.....	183,700
9.....	212,000	83,400	109,800	65,500	113,750	408,000
10.....	165,700	.....	115,000	.....	69,500	360,000
11.....	241,700	229,350	52,300	165,400	56,800	125,000
12.....	50,500	200,900	.....	101,830	.....	.....
13.....	.....	239,800	80,700	144,900	73,450	241,200
14.....	125,825	158,000	30,300	230,800	62,800	106,800
15.....	157,500	118,000	68,800	121,000	.....	182,000
16.....	179,500	47,500	83,000	70,720	133,000	169,000
17.....	132,300	.....	32,300	.....	116,400	250,800
18.....	152,800	162,800	27,200	1,372	162,700	69,500
19.....	55,500	163,200	.....	119,800	210,900	.....
20.....	.....	250,100	43,600	249,650	288,800	164,300
21.....	82,900	145,000	54,300	574,100	80,100	88,700
22.....	70,900	225,100	90,400	717,800	.....	75,800
23.....	125,700	49,400	58,700	165,150	118,000	82,200
24.....	63,500	.....	108,600	.....	.....	.....
25.....	.....	155,900	35,500	.....	37,200	137,000
26.....	.....	198,000	.....	401,200	65,200	35,000
27.....	.....	285,100	200,300	442,200	125,800	166,700
28.....	130,000	324,000	158,000	721,800	690,300	141,000
29.....	163,400	183,000	215,800	356,400	146,100	144,800
30.....	170,000	102,400	322,300	84,600	263,700	.....
31.....	136,000	.....	.....	.....	139,800	.....
MONTHLY SUMMARY.						
Shares sold.....	3,618,585	4,047,500	3,322,913	5,793,850	3,893,835	4,164,050
Shares transferred.....	1,198,321	403,270	682,510	475,755	464,413	867,537
Shares listed.....	5,084,932	.....	.....	.....	.....	.....
Low price.....	81½	79½	68½	51½	50	55½
High price.....	89½	88½	79½	72	63½	65½

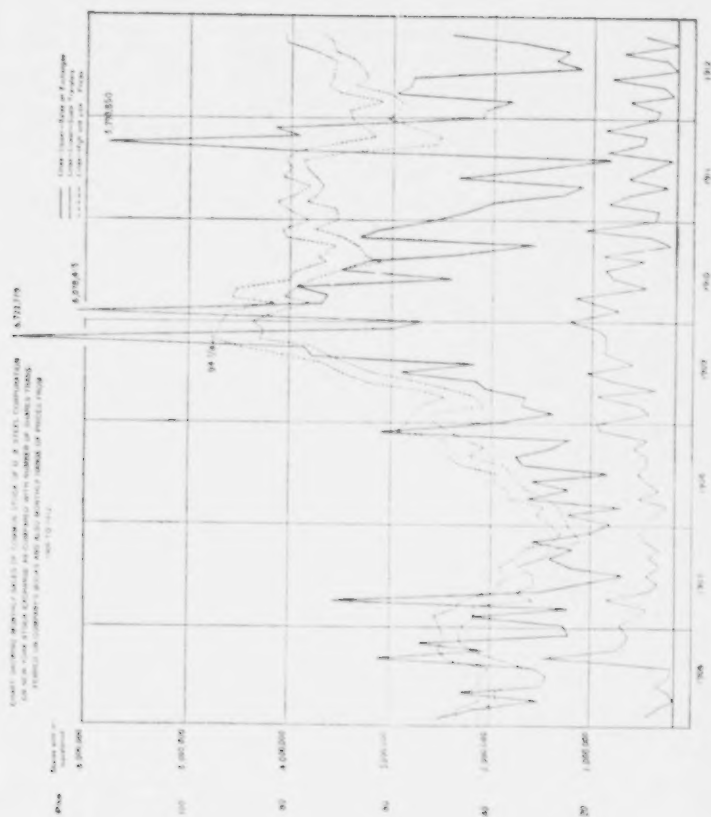


Table showing shares of common stock of United States Steel Corporation sold on New York Stock Exchange, shares transferred on company's books, and shares listed on exchange each month, 1906 to 1912, and also range of prices each month.

	January.	February.	March.	April.	May.	June.	July.	August.	September.	October.	November.	December.	Total.
1906.													
Shares sold.....	2,500,500	2,150,949	1,499,761	2,302,750	1,480,245	1,435,705	1,583,580	3,126,698	2,041,900	2,772,060	1,250,074	1,300,220	23,478,339
Shares transferred.....	478,987	336,637	187,196	251,428	340,080	269,514	251,188	1,431,228	783,373	650,277	618,747	717,892	6,316,747
Shares listed.....	5,084,952	400	383	5,084,952	30	333	323	30	433	453	453	403	.....
Low price.....	42	40	41	44	42	42	40	42	42	45	45	40	.....
High price.....	46	46	41	44	42	42	40	42	42	50	45	40	.....
1907.													
Shares sold.....	2,200,785	1,227,628	3,564,805	1,403,273	1,132,296	687,016	1,209,575	1,426,485	1,172,058	1,636,160	1,021,024	829,090	17,594,523
Shares transferred.....	551,967	460,650	838,192	418,235	335,662	445,833	312,098	404,570	321,287	498,553	505,521	475,171	5,607,013
Shares listed.....	5,084,952	42	31	5,084,952	31	31	5,084,952	31	24	5,084,952	22	24	.....
Low price.....	42	42	44	39	35	35	39	35	35	27	22	22	.....
High price.....	50	46	44	39	35	35	39	35	35	27	22	22	.....
1908.													
Shares sold.....	1,221,850	674,021	1,633,412	1,205,354	1,618,748	846,205	1,739,930	1,809,322	1,404,220	1,218,961	3,114,641	1,956,470	18,463,952
Shares transferred.....	367,348	267,198	581,039	313,942	479,440	525,544	444,805	460,000	571,141	417,737	915,056	857,319	6,249,678
Shares listed.....	5,084,952	24	28	5,084,952	32	32	37	44	41	45	47	51	.....
Low price.....	31	24	30	37	35	35	45	44	48	48	58	56	.....
High price.....	31	24	30	37	35	35	45	44	48	48	58	56	.....
1909.													
Shares sold.....	1,394,218	1,738,761	1,705,150	2,067,939	2,150,227	2,021,736	2,158,740	3,777,615	3,848,690	6,722,779	2,980,340	2,669,577	34,135,772
Shares transferred.....	417,216	522,374	947,521	322,562	794,570	1,051,909	591,566	890,878	874,430	428,562	943,815	1,222,360	9,458,039
Shares listed.....	5,084,952	41	42	5,084,952	54	64	5,084,952	73	75	5,084,952	85	85	.....
Low price.....	51	41	42	48	54	64	67	73	75	85	85	85	.....
High price.....	53	53	49	55	64	69	74	78	90	94	93	92	.....
1910.													
Shares sold.....	6,078,415	3,680,260	3,618,585	4,043,560	2,796,935	3,529,913	3,191,005	2,265,220	1,592,990	3,319,129	3,110,700	2,563,681	39,413,384
Shares transferred.....	732,045	963,693	1,198,321	463,270	708,962	882,510	897,478	897,778	241,501	375,702	1,089,926	381,585	8,497,194
Shares listed.....	5,084,952	75	81	5,084,952	73	68	5,084,952	61	64	5,084,952	75	70	.....
Low price.....	81	75	80	88	80	79	72	73	70	80	81	75	.....
High price.....	91	82	89	88	80	79	72	73	70	80	81	75	.....
1911.													
Shares sold.....	2,226,765	1,977,740	1,312,020	1,067,880	2,356,939	1,755,485	828,327	3,750,778	5,793,850	3,893,935	4,164,050	2,126,439	31,261,108
Shares transferred.....	314,827	844,574	502,875	252,233	709,571	411,077	220,222	857,898	475,755	464,413	867,537	350,228	6,277,810
Shares listed.....	5,084,952	70	74	5,084,952	41	35	77	69	51	50	55	60	.....
Low price.....	71	70	74	73	41	35	77	69	51	50	55	60	.....
High price.....	80	82	79	78	81	80	80	79	72	62	65	69	.....

1912.										
Shares sold	2,086,550	1,838,428	2,966,275	1,110,786	1,403,300	1,255,809	1,718,250	2,403,149	1,155,480	32,088,704
Shares transferred	70,779	100,752	211,152	190,223	227,923	684,409	180,416	438,547	727,101	4,677,454
Shares listed	5,984,052		266,880	870,439	2,784,407	2,784,407				
Low price	5.9	5.84	60	64	73	71	714	733	803	
High price	69.8	61.4	70.8	72	73	75	803	803		

Ratio of shares sold to shares issued:		Ratio of shares transferred to shares sold:		Shares sold for period		Shares transferred for period	
1906	4.61	1906	0.29	184,744,182			
1907	3.46	1907	3.19	46,256,364			
1908	3.30	1908	348				
1909	2.71	1909	277				
1910	2.14	1910	215				
1911	6.13	1911	211				
1912	4.34	1912	211				
Whole period	5.19	Whole period	221				

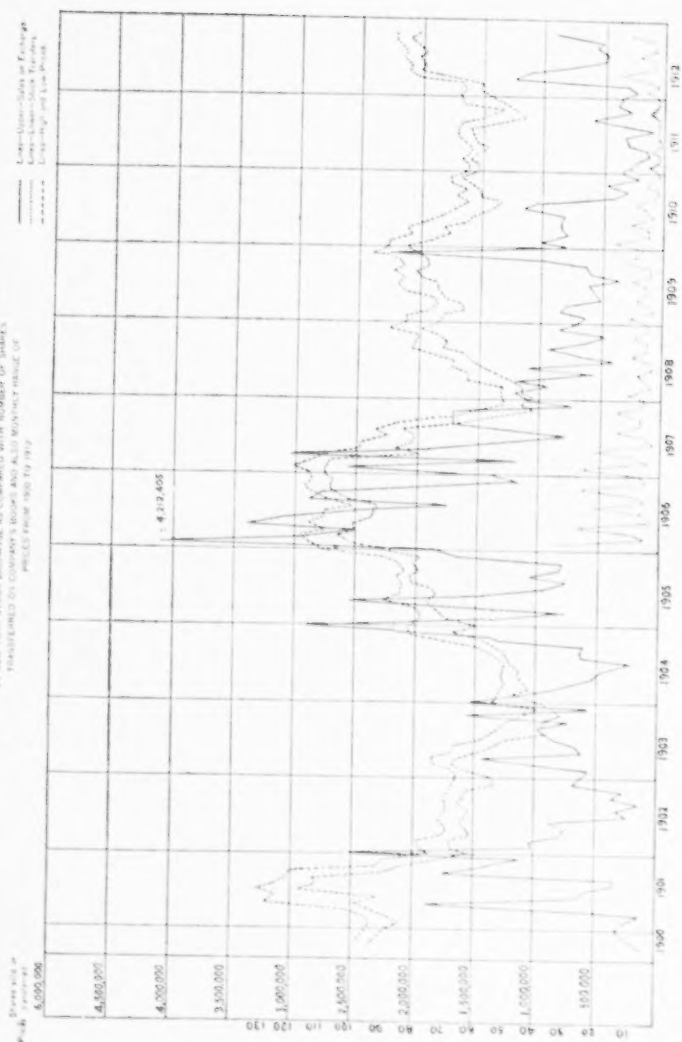
Shares sold for period.....	184,744,182
Shares transferred for period.....	46,556,364







CHART SHOWING MONTHLY SALES OF COMMON STOCK OF UNLIMITED CORP. COMPANY  
ON NEW YORK STOCK EXCHANGE AS COMPARED WITH NUMBER OF SHARES  
TRANSFERRED ON COMPANY'S BOOKS AND ALSO MONTHLY VALUE OF  
PRICES FROM 1920 TO 1912



*Shares of common stock of Amalgamated Copper Co. sold each day of the 13 most active months from 1906 to 1912, inclusive.*

Day of month.	January, 1906.	February, 1906.	March, 1906.	April, 1906.	May, 1906.	June, 1906.	August, 1906.
1.....		282,000	101,600		191,200	26,300	80,800
2.....	157,000	372,300	156,900	173,100	303,000	11,300	80,600
3.....	150,100	116,100	98,800	140,300	289,700		128,600
4.....	202,100			100,800	326,600	66,400	36,700
5.....	219,700	163,000	272,000	96,200	97,200	68,300	
6.....	90,600	110,900	180,900	151,100		40,300	59,300
7.....		98,900	109,600	35,500	165,400	82,700	42,300
8.....	81,100	98,900	88,000		141,700	50,300	43,100
9.....	92,300	54,100	165,600	98,700	125,100	33,600	79,200
10.....	200,400	74,300	65,700	170,200	115,200		36,000
11.....	136,000			169,200	173,800		41,300
12.....	255,300		75,600	97,700	75,400		
13.....	91,400	196,000	124,400	91,100		42,700	
14.....		170,900	76,600	91,400	188,000	125,300	49,100
15.....	139,000	113,900	52,900		173,400	190,600	57,600
16.....	158,400	127,900	30,000	148,300	172,700	45,700	118,700
17.....	258,600	87,300	190	132,700	144,000		119,700
18.....	263,000		110,500	245,000	71,400	77,700	107,200
19.....	129,100		150,300	217,200			
20.....	70,900	85,600	95,300	146,700	11,300	6,100?	
21.....		111,300	116,100	52,600		44,000	225,900
22.....	73,500		72,400		26,600	74,500	178,700
23.....	213,100	46,500	49,700	163,600	111,400	60,800	106,400
24.....	109,600	17,200	16,000	156,100	88,800		138,000?
25.....	119,100			104,500	89,400	178,000	70,300
26.....	124,100	67,000	84,500	160,900	22,400	178,500	
27.....		61,900	132,100	249,700		178,000?	163,400
28.....	96,700	158,400	65,200	118,600	41,100	160,700	150,600
29.....	183,000		69,600?		21,200	124,100	151,600
30.....	195,700		32,000			52,700	142,800
31.....	203,000		26,000		32,000		57,000
MONTHLY SUMMARY.							
Shares sold.....	4,212,405	2,832,620	2,584,201	3,445,300	3,194,810	2,076,145	2,865,600
Shares transferred.....	873,166	134,383	259,623	783,972	79,270	195,352	121,008
Shares listed.....							
Low price.....	103½	107	100	109½	96	93	103½
High price.....	115½	118½	109½	113½	111½	110½	111½

*Shares of common stock of Amalgamated Copper Co. sold each day of the 15 most active months from 1906 to 1912, inclusive.*

Day of month.	September, 1906.	October, 1906.	December, 1906.	January, 1907.	March, 1907.	April, 1907.
1.....	42,300	72,000	18,000	.....	88,250	136,720
2.....	.....	84,000	.....	38,900	29,400	121,960
3.....	.....	31,700	78,300	99,700	.....	38,010
4.....	78,100?	45,700	60,200	143,800	96,700	101,700
5.....	157,200	88,500	64,500	156,000	154,882	117,000
6.....	253,000?	52,600	48,500	.....	199,950	80,300
7.....	119,000	.....	38,100	138,200	90,300	.....
8.....	46,200	100,700	13,500	124,700	145,200	101,400
9.....	.....	79,900	.....	61,100	70,100	103,550
10.....	106,000	80,100	55,100	63,200	.....	114,100
11.....	91,200	61,200	90,100	87,500	84,150	90,700
12.....	77,800	44,000	78,300	50,800	60,020	84,300
13.....	140,800	28,400	81,100	.....	216,700	54,100
14.....	113,100	.....	96,000	87,500	260,825	.....
15.....	43,200	45,400	53,500	62,900	2,147,005	89,950
16.....	.....	69,400	.....	184,700	103,700	70,060
17.....	206,400	130,600	61,600	173,800	.....	77,800
18.....	127,500	208,600	86,600	206,700	125,200	24,650
19.....	141,100	177,100	116,000	92,900	192,700	22,450
20.....	58,000	90,200	48,900	.....	111,170	12,100
21.....	106,500	.....	40,700	132,100	60,050	.....
22.....	30,600	136,000	30,200	92,700	79,200	66,610
23.....	.....	100,200	.....	56,200	72,221	67,610
24.....	107,100	55,200	59,600	50,100	.....	54,000
25.....	166,900	113,800	.....	74,700	192,500	30,100
26.....	160,400	86,700	54,100?	73,100	161,700	24,420
27.....	164,500	20,000	66,200	.....	117,100	15,150
28.....	143,700	.....	45,700	95,000	70,700	.....
29.....	45,000	28,500	23,300	85,200	88,600	34,823
30.....	.....	16,400	.....	104,100	.....	54,300
31.....	.....	26,000	46,600	87,000	.....	.....
MONTHLY SUMMARY.						
Shares sold.....	2,611,795	2,091,275	1,437,450	2,601,990	3,103,878	1,912,120
Shares transferred.....	213,584	648,773	198,066	669,361	248,641	555,456
Shares listed.....	108½	109½	110½	111½	78½	86
Low price.....	115½	117½	115½	121½	111½	99½

*Shares of common stock of Union Pacific Railroad Co., sold each day of the 13 most active months from 1906 to 1912, inclusive.*

Day of month.	January, 1906.	February, 1906.	March, 1906.	April, 1906.	May, 1906.	August, 1906.	March, 1907.
1.....		226,000	127,300		209,100	156,400	98,300?
2.....	129,500	262,400	142,900	116,800	298,000	245,000	36,700
3.....	115,000	145,500	88,000	135,600	163,700	138,300	
4.....	209,000			149,200	164,900	37,400	146,225
5.....	243,700	146,500	137,700	104,700	162,200		187,700
6.....		118,600	101,400	154,000		100,400	227,500
7.....		123,100	69,500	58,400	118,800	64,200	215,400
8.....	141,000	150,700	96,200		156,400	74,200	301,200
9.....	168,000	142,300	117,500	135,000	178,000	100,100	105,600
10.....	133,800	50,300	51,600	199,500	154,800	84,300	
11.....	294,200			175,000	167,700	36,000	135,600
12.....	214,300		71,100	113,700	37,600		123,300
13.....	69,000	107,800	59,100	62,700		88,800	439,500
14.....		177,000	58,300	38,200	116,000	60,100	369,250
15.....	141,700	155,800	34,600		172,000	217,100	225,700
16.....	103,700	156,000	31,100	84,700	90,600	291,400	
17.....	266,700	119,000	8,800	104,300	71,900	582,200	96,000
18.....	109,700			194,200	62,100	252,100	157,700
19.....	156,700	113,600	51,200	238,000	11,000		208,850
20.....	57,500	107,800	42,000	158,000		290,100	150,400
21.....		121,700	50,600	65,200	30,400	166,100	500?
22.....			48,800		30,500	182,700	106,600
23.....	120,100	128,300	76,100	153,200	68,700	118,500	105,100
24.....	384,700	87,200	20,400	193,400	56,000	233,100	
25.....	224,100			142,700	81,200	149,300	15,500?
26.....	112,500	160,000	50,100	205,700	17,400		126,200
27.....	42,600	144,300	57,000	274,500		166,000	159,650
28.....		236,600	73,900	148,800	26,500	245,400	121,900
29.....	184,200		101,400		22,900	241,800	119,300
30.....	243,500		126,600	161,900		354,100?	
31.....	184,900		82,600		50,000	180,700?	
MONTHLY SUMMARY.							
Shares sold.....	4,560,365	3,238,631	2,019,451	3,579,934	2,613,840	4,881,650	4,203,735
Shares transferred.....							
Shares listed.....	1,886,209						1,954,791
Low price.....	148	148½	149½	144½	138¾	133	130½
High price.....	160½	158½	157½	159½	151½	191½	171½

*Shares of common stock of Union Pacific Railroad Co., sold each day of the 13 most active months from 1906 to 1912, inclusive.*

Day of month.	April, 1907.	May, 1907.	May, 1908.	August, 1909.	August, 1911.	Septem- ber, 1911.
1.....	143,000	123,400	121,700		21,950	38,950
2.....	125,200	25,770	71,900	57,600	74,950	
3.....	124,900	181,900		73,200	71,200	
4.....	155,250	73,800	115,000	71,000	112,800	
5.....	184,100		76,800	28,400	90,900	50,800
6.....	6337	167,420	130,900	35,500		77,900
7.....		148,425	101,500	63,200	93,300	105,200
8.....	124,300	79,050	159,000		140,000	144,050
9.....	196,500	276,100	62,000	82,600	123,900	74,800
10.....	138,100	194,870		61,250	196,900	
11.....	188,600	20,500	123,200	90,100	163,100	161,400
12.....	171,800		111,920	21,200	158,600	96,300?
13.....	158,000		132,100	215,500		143,525
14.....		132,900?	127,500	91,300	164,400	171,900
15.....	191,750	186,400	170,500	181,450	100,500	99,500
16.....	106,200	83,000	84,200	174,600	20,800	58,500
17.....	166,000	90,400				
18.....	58,700	36,900	186,550	189,500	96,900	100,500
19.....	37,100		227,400	189,600	42,500	71,880
20.....	26,400	148,700	243,437	218,300		123,250
21.....		211,000	216,500	63,200	144,800	151,700
22.....	132,600	180,800	221,750		155,700	149,800
23.....	207,770	100,873?	187,100	131,655	75,260	57,800
24.....	198,350	117,000		107,800	148,450	
25.....	137,800	31,300	206,200	200,700	122,500	277,400
26.....	119,900		184,700	243,900	49,600	179,200
27.....	44,700	150,650	178,100	238,800	95,400	279,500
28.....		118,900	121,735	122,400		242,400
29.....	188,740	112,500	74,320		84,282	125,100
30.....	216,010			184,400	91,100	43,600
31.....		81,150		68,100	53,600	
MONTHLY SUMMARY.						
Shares sold.....	3,660,930	3,508,127	3,661,844	3,418,282	3,088,520	3,068,53
Shares transferred.....						
Shares listed.....	1,954,709		1,954,899			
Low price.....	132½	131½	134½	194½	165½	155½
High price.....	148½	130½	151½	219	182½	170½



1911										
Shares sold										
Shares transferred	1,078,073	912,040	742,370	489,010	1,130,925	985,900	735,770	3,088,520	3,068,500	1,450,430
Shares listed	2,165,797			2,165,797		183	2,166,298			2,166,432
Low price	169	174	170	171	178	183	184	185	153	158
High price	175	183	178	173	186	195	192	189	170	164
1912										
Shares sold										
Shares transferred	1,548,025	934,680	1,076,812	986,344	864,975	398,420	582,610	547,100	624,135	767,925
Shares listed	2,130,891	226,121	160,491	100,799	255,254	78,218	71,531	91,122	96,201	80,497
Low price	191	190	163	170	169	169	163	169	167	163
High price	194	194	172	173	174	173	171	174	173	173
Ratio of shares sold to shares listed										
1906	18.91									
1907	18.87									
1908	18.87									
1909	18.67									
1910	18.13									
1911	18.89									
1912	18.69									
Whole period	18.66									
Ratio of shares sold to shares listed										
Total shares sold for period										183,814,396
Ratio of shares sold to shares listed										0.160

GRAPH SHOWING MONTHLY SALES OF UNITED STATES PACIFIC COAST STEAMSHIP CO. FROM 1906 TO 1912. THE Y-AXIS REPRESENTS THE NUMBER OF PASSENGERS AND THE X-AXIS REPRESENTS THE MONTHS OF THE YEAR.

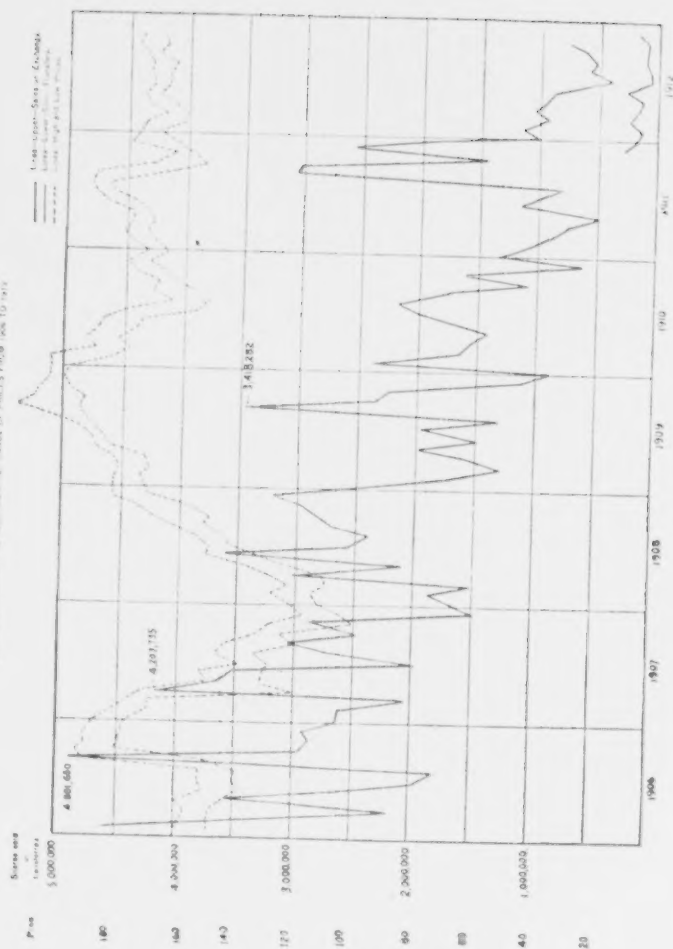


Table showing shares of common and preferred stock (voting trust certificates) of California Petroleum Co. sold on New York Stock Exchange, shares transferred on company's books, and shares listed on exchange for the month of October, 1912, and also range of prices each month.

## COMMON.

Shares sold.....	362,270
Shares transferred—.....	92,275
Shares listed.....	105,729
Low price.....	14
High price.....	22½

## PREFERRED.

Shares sold.....	38,875
Shares transferred.....	69,354
Shares listed.....	161,000
Low price.....	90¼
High price.....	95½

Table showing shares of common stock of Mexican Petroleum Co. sold on New York Stock Exchange, shares transferred on company's books, and shares listed on exchange each month from April to October, 1912, and also range of prices each month.

	April.	May.	June.	July.	August.	September.	October.
Shares sold.....	205,550	207,480	41,000	24,600	119,370	202,400	253,110
Shares transferred.....	152,729	41,084	16,318	58,000	32,743	28,889	41,667
Shares listed.....	121,849			121,849			121,849
Low price.....	62½	65½	65½	67	67½	77	82½
High price.....	72	73½	69½	70½	70½	84½	90½

*Shares of common stock of Columbus & Hocking Coal & Iron Co. sold each day of the 15 most active months from 1905 to 1912, inclusive.*

Day of month	January, 1906.	February, 1906.	April, 1906.	Novem- ber, 1906.	Decem- ber, 1906.	March 1907.
1.....		11,000		200	1,200	
2.....	400	2,700	2,200	100		
3.....	100	1,900	19,800	200	1,000	
4.....	700		9,700		3,000	
5.....	200	3,000	1,000	1,300	1,500	
6.....		1,500	1,900		1,700	
7.....		3,000	600	100	3,600	1,000
8.....	100	300		1,000	1,000	
9.....	1,000	100	700	100		5,000
10.....	700	800	1,400	800	1,000	700
11.....	100		700		2,000	1,000
12.....	300		1,400	200	2,900	400
13.....	500		200	900	2,400	5,210
14.....		700	100	400	600	1,200
15.....	13,700	1,000		200		
16.....	1,000	1,300	1,000	600	200	
17.....	2,900	400	1,000		3,000	1,300
18.....	15,600		400		1,000	600
19.....	4,000	2,400	700	9,900	4,500	800
20.....	1,300	1,700	1,500	5,500	1,800	2,100
21.....		2,200	900	12,300	400	3,200
22.....	1,500			4,800	1,000	
23.....	1,600	200	1,800	33,900		3,000
24.....	1,500	300	900	8,000	800	2,000
25.....	700		200			1,300
26.....	13,600	900	2,600	17,300	700	1,210
27.....	10,000	400	700	5,800	300	700
28.....		400	800	1,800	400	600
29.....	16,200				200	
30.....	9,300		1,100	3,300		600
31.....	9,200				100	100
MONTHLY SUMMARY.						
Shares sold.....	110,525	41,125	58,035	197,430	37,085	32,340
Shares transferred.....	11,459	8,161	40,154	14,810	7,755	7,269
Shares listed.....	60,256					
Low price.....	17 1/2	19 1/2	14 1/2	19 1/2	25 1/2	14 1/2
High price.....	26 1/2	29 1/2	26 1/2	30 1/2	29 1/2	21 1/2

Shares of common stock of *Columbus & Hocking Coal & Iron Co.* sold each day of the 13 most active months from 1906 to 1912, inclusive.—Continued.

Day of month.	Decem- ber, 1908.	March, 1909.	April, 1909.	May, 1909.	June, 1909.	August, 1909.	Jan- uary, 1910.
1	5,600	370	1,525	800	500		
2	1,300	820	1,700		500	1,500	
3	5,200	6,490	1,000	900	500	200	3000
4	11,400	2,425		700	500	1,200	1,100
5	5,900	2,300	5,400	2,300	100	2,200	800
6		5,000	6,700	1,100		5,000	300
7	2,000		2,100	1,700	800	2,200	200
8	500	9,700	5,800	700	400		300
9	5,250	5,000			400	4,500	
10	2,900	9,000		1,100	8,550	300	200
11	2,500		2,000	500	5,700	200	300
12	2,000	12,240	2,000	200	400	900	100
13		1,500	2,800	200		900	1,100
14	1,300		5,800	2,400	2,300	600	1,600
15	1,600	9,650	2,500	500		100	800
16	1,900	8,250	3,210		2,000		400
17	1,500	3,500	1,000	2,100	1,800	1,200	
18	1,500	8,400		5,000	1,400	900	3,100
19	910	3,100	2,800	900	700	400	23,715
20		1,900	4,900	1,400		500	13,400
21	600		1,500	1,450	1,100	300	6,000
22	3,000	4,700	1,000	1,000	300		1,100
23	700	7,200	2,800		200	100	
24	200	3,700	4,700	2,700	300	000	2,600
25		6,585		800	300	500	1,200
26		4,100	3,500	1,400	300	900	4,300
27		3,000	1,500	400		600	1,100
28	1,000		6,450	400	200	400	200
29	300	3,600	3,850		300		
30	500	3,500	2,100		400	1,000	
31	350	5,500				1,700	550
MONTHLY SUMMARY.							
Shares sold.....	62,375	143,490	75,345	35,546	29,785	30,290	92,500
Shares transferred.....	12,621	28,046	25,096	8,454	4,491	4,655	21,591
Low price.....	69,256	69,304					69,896
High price.....	241	24	431	624	62	64	124
	272	451	641	672	672	732	924

*Table showing shares of common stock of Columbus & Hocking Coal & Iron Co. sold on New York Stock Exchange, shares transferred on company's books, and shares listed on exchange each month, 1906 to 1912, and also range of prices each month.*

	January.	February.	March.	April.	May.	June.	July.	August.	September.	October.	November.	December.	Total.
<b>1906</b>													
Shares sold.....	110,525	41,127	9,650	58,005	18,590	15,580	8,290	12,601	5,600	19,020	107,430	37,085	442,841
Shares transferred.....	11,459	8,161		40,134	3,921	2,635	2,060	967	1,665	3,580	14,810	7,755	97,137
Shares listed.....	60,256	193	10	184	17	183	171	184	173	173	194	254	
Low price.....	17 1/2	26 1/2	21	26	21 1/2	25	25	21 1/2	19 1/2	21 1/2	30 1/2	29 1/2	
High price.....	26 1/2												
<b>1907</b>													
Shares sold.....	12,460	7,065	23,462	18,170	6,460	3,710	3,040	6,161	3,730	6,850	3,120	8,915	101,082
Shares transferred.....	4,565	6,525	6,231	3,462	1,646	500	370	585	980	900	1,808	5,020	36,854
Shares listed.....	60,256												
Low price.....	24 1/2	22	20	25	21 1/2	21 1/2	21 1/2	19 1/2	20 1/2	15 1/2	15	14	
High price.....	28	25	25 1/2	28 1/2	27 1/2	25	25 1/2	24 1/2	24 1/2	22	19	19	
<b>1908</b>													
Shares sold.....	7,500	1,100	32,340	9,720	29,700	4,410	11,600	16,320	500	6,320	27,380	62,375	208,953
Shares transferred.....	1,155	1,689	7,360	2,245	3,549	755	1,297	5,351	1,705	1,664	3,569	12,623	41,881
Shares listed.....	69,256												
Low price.....	15 1/2	15	14 1/2	17 1/2	17 1/2	20	20 1/2	20 1/2	20	19	10 1/2	24 1/2	
High price.....	17 1/2	16 1/2	21	19 1/2	24	23	23 1/2	23 1/2	21 1/2	20 1/2	25	27 1/2	
<b>1909</b>													
Shares sold.....	28,325	8,650	143,400	75,545	35,546	29,785	11,700	30,260	25,875	9,635	20,980	25,365	436,896
Shares transferred.....	10,151	4,611	28,046	27,060	8,454	4,401	3,065	4,673	6,513	3,156	4,142	17,217	120,277
Shares listed.....	69,304												
Low price.....	24 1/2	21 1/2	24	40 1/2	62 1/2	62	62 1/2	64	72	78 1/2	78 1/2	80	
High price.....	28	25 1/2	45 1/2	64 1/2	65 1/2	67 1/2	66 1/2	70 1/2	81	81	88 1/2	91 1/2	
<b>1910</b>													
Shares sold.....	92,500	8,650	3,960	2,455	5,225	820	890	1,050	2,150	9,830	290	100	125,640
Shares transferred.....	27,201	9,360	3,550	3,735	5,264	2,360	944	1,328	1,261	3,654	80	104	51,474
Shares listed.....	69,896												
Low price.....	12 1/2	13 1/2	13 1/2	7	16 1/2	6 1/2	4 1/2	6 1/2	3	4 1/2	4 1/2	4 1/2	
High price.....	92 1/2	21 1/2	18	15 1/2	10	6	5 1/2	6 1/2	5	7	4 1/2	5	

1911											
Shares sold.....	100	200	1,000	.....	.....	.....	.....	.....	.....	.....	.....
Shares transferred.....	200	20	80	.....	.....	.....	.....	.....	.....	.....	.....
Shares listed.....	69,508	4	24	.....	.....	.....	.....	.....	.....	.....	.....
Low price.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
High price.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Ratio of shares transferred to shares sold:				Ratio of shares sold to share listed:				Total shares sold for period.....			
1906.....	.....	.....	.....	1906.....	6.219	.....	.....	.....	.....	.....	1,317,014
1907.....	.....	.....	.....	1907.....	.....	.....	.....	.....	.....	.....	.....
1908.....	.....	.....	.....	1908.....	3.05	.....	.....	.....	.....	.....	.....
1909.....	.....	.....	.....	1909.....	2.90	.....	.....	.....	.....	.....	.....
1910.....	.....	.....	.....	1910.....	2.73	.....	.....	.....	.....	.....	.....
1911.....	.....	.....	.....	1911.....	4.60	.....	.....	.....	.....	.....	.....
1912.....	.....	.....	.....	1912.....	1.87	.....	.....	.....	.....	.....	.....
Whole period.....	.....	.....	.....	Whole period.....	2.59	.....	.....	.....	.....	.....	341,943

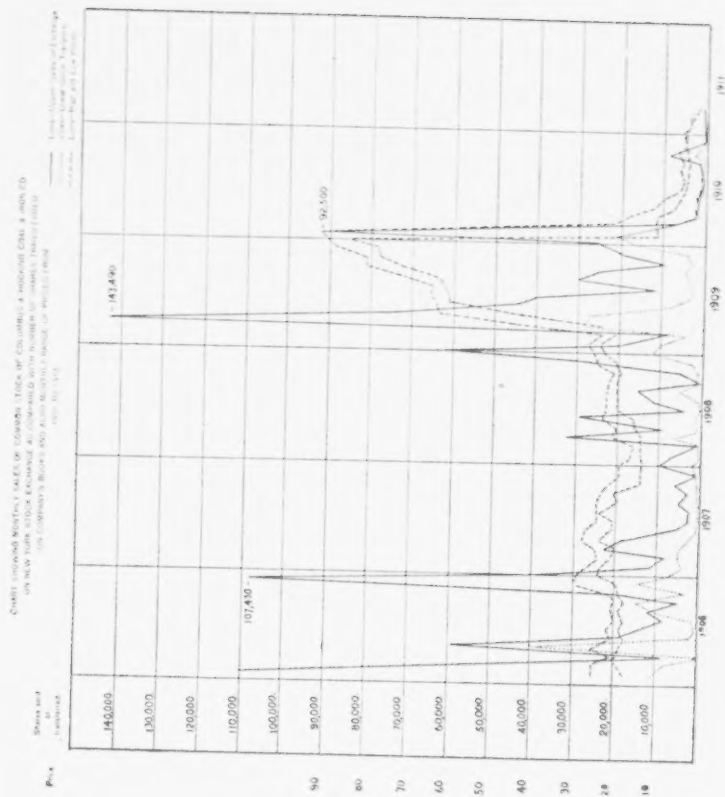


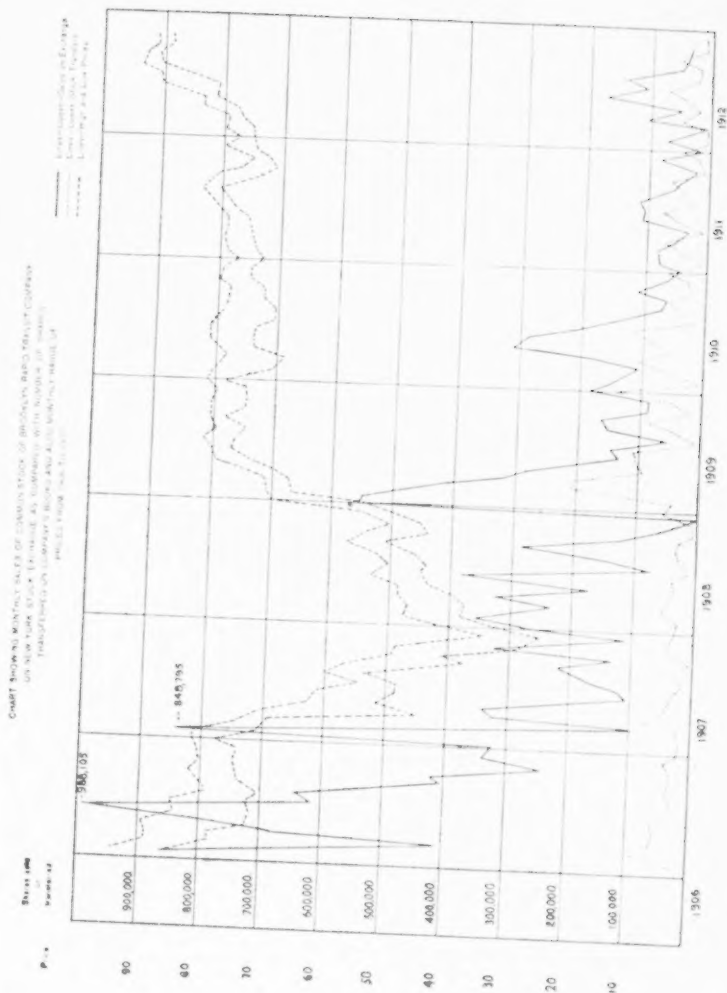
Table showing shares of common stock of Brooklyn Rapid Transit Co. sold on New York Stock Exchange, shares transferred in company's books, and shares listed on exchange each month, 1905 to 1912, and also range of prices each month.

APPENDICES.

219

	January.	February.	March.	April.	May.	June.	July.	August.	September.	October.	November.	December.	Total.
<b>1905.</b>													
Shares sold.....	855,085	421,345	689,892	783,325	988,165	629,415	652,170	412,219	438,260	296,377	343,379	335,315	6,814,748
Shares transferred.....	21,296	93,172	69,510	36,761	65,672	46,632	32,577	45,290	30,129	46,579	48,463	29,615	683,146
Shares listed.....	450,000	450,000	784	791	791	791	791	791	791	791	791	791	791
Low price.....	851	883	883	883	841	891	781	711	79	791	791	791	791
High price.....	941	883	883	883	841	891	781	711	821	891	811	831	831
<b>1907.</b>													
Shares sold.....	848,795	97,039	327,838	354,645	102,350	131,130	177,980	228,344	141,164	329,290	129,213	272,083	3,140,892
Shares transferred.....	24,157	30,341	78,073	48,117	37,919	31,144	21,375	41,198	14,914	46,466	44,378	40,061	438,923
Shares listed.....	711	711	711	711	711	711	711	711	711	711	711	711	711
Low price.....	803	752	701	631	621	48	554	571	431	29	291	221	411
High price.....	803	752	701	631	621	562	604	571	491	481	341	411	411
<b>1908.</b>													
Shares sold.....	393,677	210,500	331,408	186,930	384,560	92,080	159,870	281,960	139,555	77,000	100	561,715	2,829,415
Shares transferred.....	34,250	57,353	51,710	46,752	40,945	23,790	35,657	39,098	33,668	16,168	27,823	68,048	469,401
Shares listed.....	420,000	420,000	394	441	431	441	47	509	44	461	481	541	481
Low price.....	381	371	394	441	431	441	47	509	44	461	481	541	481
High price.....	471	491	48	481	34	591	551	271	521	591	591	691	691
<b>1909.</b>													
Shares sold.....	515,630	412,530	324,885	285,470	141,190	165,300	55,560	168,065	173,675	396,215	92,257	188,493	2,618,110
Shares transferred.....	45,681	227,516	211,859	98,153	101,537	107,807	17,019	46,297	88,973	35,115	56,086	143,342	1,182,827
Shares listed.....	47	651	70	744	771	791	72	78	791	74	743	771	771
Low price.....	721	721	704	704	801	821	791	811	811	811	79	821	821
High price.....	721	721	704	704	801	821	791	811	811	811	79	821	821
<b>1910.</b>													
Shares sold.....	146,512	119,022	176,320	313,990	280,480	296,310	138,555	80,450	71,664	126,570	99,139	41,950	1,891,382
Shares transferred.....	15,821	68,491	118,652	57,801	88,557	113,302	38,628	47,234	63,742	26,964	49,624	62,117	743,564
Shares listed.....	430,000	430,000	781	791	791	791	791	791	791	791	791	791	791
Low price.....	781	681	741	741	791	891	791	791	791	791	791	791	791
High price.....	801	771	791	781	821	891	791	791	791	791	791	791	791
<b>1911.</b>													
Shares sold.....	83,961	87,475	54,375	20,573	116,590	199,141	126,412	99,650	48,000	24,640	78,870	29,565	890,182
Shares transferred.....	15,513	50,741	72,467	16,967	52,865	76,899	26,662	45,638	60,014	19,722	25,993	45,061	518,149
Shares listed.....	490,000	490,000	791	791	781	791	80	841	77	711	791	791	791
Low price.....	791	791	791	791	781	791	80	841	77	711	791	791	791
High price.....	791	791	791	791	781	791	80	841	77	711	791	791	791





*Shares of common stock of Brooklyn Rapid Transit Co. sold each day of the 13 most active months from 1906 to 1912, inclusive*

Day of month.	January, 1906.	March, 1906.	April, 1906.	May, 1906.	June, 1906.	July, 1906.	August, 1906.
1.....		19,500		73,000	6,400		6,032
2.....	10,000	21,000	15,000	80,800	6,200	26,000	500
3.....	11,800	5,300	41,700	34,000		31,100	1,100
4.....	9,000		21,400	55,000	35,800		
5.....	6,000	28,000	22,400	33,500	29,400	28,300	4,000
6.....	4,400	18,200	29,000		14,800	34,200	10,500
7.....		11,000	10,200	56,400	35,100	3,400	14,800
8.....	18,700	10,100		94,500	11,300		12,800
9.....	14,900	57,100	27,900	58,400	5,400	23,400	5,900
10.....	16,100	20,000	25,000	44,900		15,900	9,000
11.....	16,400		34,200	49,600	9,800	12,400	9,000
12.....	17,500	41,000	29,100	19,100	15,000	32,000	15,100
13.....	7,900	55,500	33,200		43,200	20,900	10,800
14.....		47,300	10,000	50,200	29,800	9,100	15,100
15.....	74,500	35,700		40,700	28,200		10,800
16.....	36,000	17,800	17,200	52,000	11,600	21,000	10,800
17.....	14,400	3,900	13,200	40,700		9,800	6,300
18.....	9,700			27,100	26,700	30,300	15,600
19.....	39,200	32,300	38,500	5,300	33,000	11,500	21,000
20.....	10,400	15,700	30,100		17,000	27,500	21,000
21.....		17,500	6,100	11,000	27,700	19,100	6,000
22.....	16,500	6,000		25,900	15,000		8,100
23.....	50,100	7,100	38,400	58,100	26,400	48,700	2,000
24.....	69,000	4,200	48,700	21,200		55,000	1,000
25.....	105,000		26,800	24,900	50,800	34,000	2,000
26.....	51,200	14,800	39,800	6,300	31,400	21,000	4,000
27.....	32,700	26,000	24,400		34,000	39,000	1,000
28.....		45,700	21,000	13,700	30,000	8,200	4,200
29.....	69,400	18,000		14,500	27,700		8,000
30.....	43,000	59,200	40,100		8,800		18,170
31.....	19,900	17,100		14,700		19,300	
MONTHLY SUMMARY.							
Shares sold.....	855,085	680,962	783,325	988,105	629,415	652,170	228,344
Shares transferred.....	21,236	69,510	56,761	65,072	46,032	32,377	41,198
Shares listed.....	450,000						
Low price.....	85½	78½	72½	72	73½	71	67½
High price.....	94½	88½	89½	84½	85½	78½	77½

Shares of common stock of Brooklyn Rapid Transit Co. sold each day of the 13 most active months from 1906 to 1912, inclusive—Continued.

Day of month.	January, 1908.	May, 1908.	December, 1908.	January, 1909.	February, 1909.	March, 1909.
1.....		2,025	20,400		0,050	20,790
2.....	8,205	1,770	5,960	22,780	28,510	24,750
3.....	10,720		9,000		7,850	22,300
4.....	0,570	2,400	2,400	50,800	7,000	17,275
5.....		6,900	5,800	24,200	15,350	10,800
6.....	0,080	4,000		32,050	8,300	2,800
7.....	5,620	0,800	11,630	15,000		
8.....	0,025	14,000	2,300	21,420	15,050	4,800
9.....	20,000	0,200	21,500	22,700	0,200	7,000
10.....	22,000		31,080		4,000	0,850
11.....	0,400	44,370	24,000	18,900	7,500	0,100
12.....		30,025	11,200	40,600		7,000
13.....	12,500	0,700		27,725		1,850
14.....	14,025	24,000	11,450	24,050		
15.....	20,700	12,150	8,000	10,800	37,800	2,000
16.....	17,550	0,700	9,650	25,050	10,010	5,000
17.....	23,185		11,650		8,025	8,000
18.....	14,900		16,075	21,200	18,675	11,200
19.....			39,750	19,000	7,400	2,770
20.....	10,135	23,800		12,000	8,700	2,150
21.....	17,015	15,650	34,700	7,800		
22.....	14,085	12,025	49,250	3,900		5,300
23.....	5,827	9,000	77,800	5,000	40,270	0,500
24.....	2,820		50,500		23,625	5,100
25.....	1,400	17,510		5,650	31,400	2,100
26.....		10,050		4,800	3,100	2,000
27.....	10,770	27,000		12,700	11,300	7,200
28.....	24,900	8,700	29,000	34,075		
29.....	27,220	4,800	26,570	21,045		38,800
30.....	13,010		19,545	14,000		48,850
31.....	8,625		9,640			37,750
MONTHLY SUMMARY.						
Shares sold.....	361,075	384,500	501,715	215,630	412,550	324,885
Shares transferred.....	34,270	40,905	68,048	45,681	227,516	211,870
Shares listed.....	430,000					
Low price.....	384	401	341	65	674	70
High price.....	474	54	604	724	792	704

*Table showing shares of common stock of Rock Island Co. sold on New York Stock Exchange, shares transferred on company's books, and shares listed on exchange each month, 1906 to 1912, and also range of prices each month.*

	January.	February.	March.	April.	May.	June.	July.	August.	September.	October.	November.	December.	Total.
1996.													
Shares sold.	191,631	220,690	108,260	116,120	67,960	80,780	68,620	273,834	80,300	363,370	512,150	166,698	2,291,423
Shares transferred.	46,969	47,003	29,503	31,354	26,231	26,746	25,065	42,717	31,967	45,163	48,680	78,962	481,401
Shares listed.	894,273	244	24	24	24	24	24	24	24	24	24	24	24
Low price.	28	28	28	28	28	28	28	28	28	28	28	28	28
High price.	28	28	28	28	28	28	28	28	28	28	28	28	28
1997.													
Shares sold.	212,410	116,918	211,685	69,459	46,915	92,115	53,475	10,885	79,680	90,757	38,850	81,156	1,053,268
Shares transferred.	32,771	34,554	81,722	806,013	22,302	22,408	19,750	29,372	12,719	40,101	45,330	33,310	427,889
Shares listed.	895,735	24	24	24	24	24	24	24	24	24	24	24	24
Low price.	28	28	28	28	28	28	28	28	28	28	28	28	28
High price.	30	28	28	28	28	28	28	28	28	28	28	28	28
1998.													
Shares sold.	28,760	45,840	39,890	37,323	64,440	20,203	39,490	119,920	61,440	85,280	130,946	153,415	825,797
Shares transferred.	10,943	25,509	18,028	14,158	40,628	20,872	16,115	41,578	28,750	25,939	28,346	37,412	313,218
Shares listed.	134	103	11	13	15	15	13	14	17	897,337	194	22	24
Low price.	154	134	153	154	154	154	154	154	154	154	154	154	154
High price.	154	134	153	154	154	154	154	154	154	154	154	154	154
1999.													
Shares sold.	182,490	63,410	77,765	452,965	568,180	499,175	106,025	513,956	249,575	409,325	295,330	1,107,965	4,632,384
Shares transferred.	38,194	27,835	29,191	64,602	161,802	124,125	96,622	125,433	77,759	72,549	49,211	363,946	1,167,289
Shares listed.	898,222	20	22	24	28	29	899,214	37	36	899,648	384	39	39
Low price.	253	253	253	253	253	253	253	253	253	253	253	253	253
High price.	253	253	253	253	253	253	253	253	253	253	253	253	253
2000.													
Shares sold.	712,727	531,106	347,570	270,085	223,630	260,400	330,550	251,371	99,830	293,750	178,969	80,151	3,500,180
Shares transferred.	204,806	99,297	166,405	14,908	56,808	42,382	55,083	82,381	37,169	33,608	27,769	25,576	808,172
Shares listed.	900,859	39	44	96,183	41	204	907,421	27	28	907,421	27	28	28
Low price.	384	50	54	492	46	41	391	34	34	391	34	31	31
High price.	574	50	54	492	46	41	391	34	34	391	34	31	31
2001.													
Shares sold.	132,400	90,860	40,175	29,400	132,910	164,800	59,820	176,100	57,450	36,925	72,525	42,270	1,039,115
Shares transferred.	20,011	23,968	27,413	8,940	28,240	48,821	29,635	67,445	30,124	20,673	15,023	15,881	331,473
Shares listed.	907,961	24	24	274	26	32	908,735	24	224	908,742	24	224	24
Low price.	284	284	284	284	284	32	305	319	319	319	319	319	319
High price.	348	348	204	204	334	344	334	344	344	344	344	344	344

1912.

Shares sold.....	37,010	127,000	249,553	116,955	33,505	16,850	32,350	124,000	100,755	31,639	802,165
Shares transferred.....	10,536	33,017	36,439	25,641	14,096	7,877	10,412	20,701	43,782	13,833	234,456
Shares listed.....	234	254	294	224	908,882	234	244	25	908,882	234	234,456
Low price.....	234	254	294	224	294	234	244	25	234	234	234,456
High price.....	234	254	294	224	294	234	244	25	234	234	234,456

Ratio of shares sold to shares listed:

1906.....	2.53
1907.....	1.17
1908.....	.92
1909.....	4.50
1910.....	2.96
1911.....	1.14
1912.....	.98
Whole period.....	2.17

Ratio of shares transferred to shares sold:

1906.....	196
1907.....	197
1908.....	198
1909.....	199
1910.....	200
1911.....	201
1912.....	202
Whole period.....	203

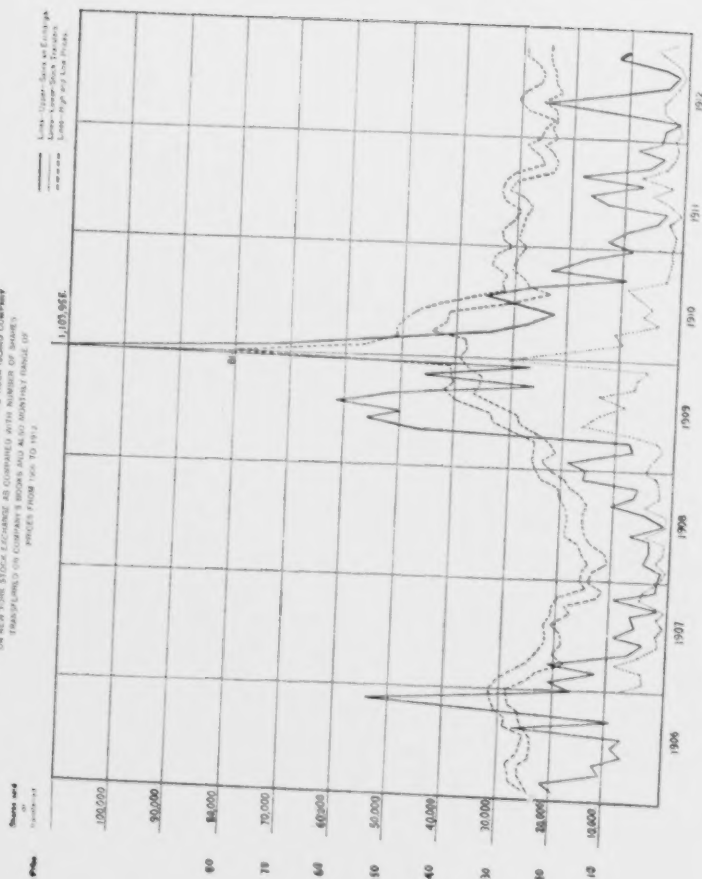
Shares sold for period.....

Shares transferred for period.....

13,691,336

3,768,988

CHART SHOWING MONTHLY SALES OF COMMON STOCK OF THE ROCK ISLAND COMPANY  
ON NEW YORK STOCK EXCHANGE AS COMPARED WITH MONTHLY SALES OF BONDS  
TRANSACTIONS ON COMPANY'S BOOKS AND ALSO MONTHLY RANGE OF  
PRICES FROM 1906 TO 1912.



## APPENDICES.

227

Shares of common stock of Rock Island Co. sold each day of the 13 most active months from 1906 to 1912, inclusive.

Day of month.	October, 1906.	Novem- ber, 1906.	April, 1909.	May, 1909.	June, 1909.	July, 1909.	August, 1909.
1.....	21,200	3,000	4,500	2,300	15,200	14,400	.....
2.....	81,600	11,300	1,900	.....	7,100	11,300	11,800
3.....	90,400	3,500	1,300	8,500	46,300	.....	11,700
4.....	18,000	.....	.....	13,900	36,000	.....	6,900
5.....	9,300	10,400	800	10,500	15,200	.....	12,100
6.....	3,800	.....	27,250	11,000	.....	11,700	20,900
7.....	.....	9,900	6,200	17,500	54,300	41,400	19,600
8.....	31,100	7,200	9,300	25,700	27,600	22,600	.....
9.....	9,600	4,200	.....	.....	18,800	10,900	31,400
10.....	4,900	800	.....	44,100	9,100	2,050	36,500
11.....	5,300	.....	.....	23,200	6,800	.....	22,100
12.....	3,100	2,500	15,500	106,800	2,800	4,000	30,100
13.....	6,000	13,400	6,700	96,400	.....	12,300	21,500
14.....	.....	6,900	4,200	55,800	7,700	6,800	10,700
15.....	10,900	92,500	7,200	9,900	14,400	3,000?	.....
16.....	3,900	46,300	21,900	.....	18,700	34,900	18,350
17.....	6,200	11,200	16,825	16,300	44,000?	17,700	26,500
18.....	6,500	.....	.....	16,000	14,600	.....	13,800
19.....	9,600	17,100	55,200	19,800	3,000	36,500	43,450
20.....	8,700	41,400	34,200	11,700	.....	65,300	22,300
21.....	.....	61,000	32,900	5,800	17,600	41,200	9,800
22.....	7,200	29,800	31,000	2,700	9,900	25,550	.....
23.....	4,200	19,400	28,800	.....	11,100	44,600	18,500
24.....	1,000	12,500	26,850	8,400	9,400	26,700	11,700
25.....	1,600	.....	.....	12,500	6,900	.....	21,550
26.....	1,700	8,900	48,200	16,200	7,700	28,200	31,100
27.....	100	10,200	23,300	9,400	.....	22,600	19,100
28.....	.....	36,500	25,500	16,700	9,300	35,700	8,100
29.....	900	.....	13,250	.....	45,000	12,300	.....
30.....	3,100	26,000	6,600	.....	19,400	23,200	12,900
31.....	3,100	.....	.....	.....	.....	13,800	10,921
MONTHLY SUMMARY.							
Shares sold.....	363,350	512,150	452,995	568,180	499,375	605,625	513,656
Shares transferred.....	.....	.....	64,602	161,802	124,126	96,022	125,453
Shares listed.....	894,275	.....	.....	.....	.....	899,214	.....
Low price.....	26½	27½	24½	28½	29	32½	37
High price.....	30½	32½	29½	34	34½	39½	42½

Shares of common stock of Rock Island Co. sold each day of the 15 most active months from 1906 to 1912, inclusive—Continued.

Day of month.	October, 1909.	Decem- ber, 1909.	January, 1910.	February, 1910.	March, 1910.	July, 1910.
1.....	59,000	25,000		4,200	5,700	59,100
2.....	5,200	11,000		5,300	4,300	
3.....		8,700	99,500	18,000	11,300	
4.....	9,200	7,100	24,300	17,300	4,300	
5.....	7,000		230,000	35,800	2,800	16,700
6.....	11,000	18,500	117,900			19,100
7.....	6,800	3,300	99,100	40,600	24,900	22,100
8.....	12,200	3,200	11,300	23,400	15,500	13,900
9.....	3,450	23,200		23,100	23,800	4,150
10.....		28,400	14,000	40,800	35,100	
11.....	12,000	39,100	21,000	47,500	16,800	15,100
12.....			19,100		7,400	8,200
13.....	9,000	92,300	15,200			7,400
14.....	16,900	26,800	25,900	37,500	6,100	6,800
15.....	73,400	28,000	13,000	17,700	18,100	3,900
16.....	45,000	21,000		27,700	13,500	1,000
17.....		16,500	23,600	52,300	15,900	
18.....	25,800	24,800	28,800	39,200	15,300	12,800
19.....	52,900		34,800	18,600	3,600	2,200
20.....	26,300	38,000	29,100			6,550
21.....	14,500	27,500	19,300	16,300	5,600	7,800
22.....	17,900	40,200	3,400		3,600	4,400
23.....	7,200	148,600		18,800	12,600	2,300
24.....		5,300	16,000	7,200	7,200	
25.....	12,800		18,100	3,800		12,800
26.....	8,100		7,200	2,500		39,600
27.....	12,200	217,563	10,500			30,500
28.....	5,100	97,700	6,400	10,300	9,700	23,400
29.....	20,300	25,800	2,400		12,400	27,000
30.....	32,450	35,400			16,100	3,800
31.....		66,000	8,800		12,300	
MONTHLY SUMMARY.						
Shares sold.....	469,325	1,103,955	712,727	533,106	347,570	359,550
Shares transferred.....	72,549	303,946	204,806	99,297	106,305	58,083
Shares listed.....	899,648		900,859			907,421
Low price.....	354	394	384	39	444	224
High price.....	414	81	574	504	514	334

Table showing shares of common stock of Colorado Fuel & Iron Co. sold on New York Stock Exchange, shares transferred on company's books, and shares listed on exchange each month, 1903 to 1912, and also range of prices each month.

APPENDICES.

229

	January.	February.	March.	April.	May.	June.	July.	August.	September.	October.	November.	December.	Total.
1903.													
Shares sold.....	23,532	11,750	30,300	125,770	82,020	128,570	62,540	15,675	128,855	18,475	13,652	18,710	660,819
Shares transferred.....	8,988	4,517	9,289	13,820	9,235	8,116	90,564	2,340	4,655	4,400	8,365	.....	107,879
Shares listed.....	230,310	.....	.....	239,310	.....	.....	239,310	.....	.....	239,310	.....	.....	.....
Low price.....	73	73	73	64	61	59	40	40	40	25	24	24	.....
High price.....	85	79	72	64	70	69	65	54	54	41	32	33	.....
1904.													
Shares sold.....	15,786	8,550	8,520	21,195	5,800	3,300	34,998	17,320	102,105	299,265	537,520	353,570	1,403,229
Shares transferred.....	.....	7,842	1,908	5,235	2,301	1,730	7,266	5,585	47,748	57,702	79,230	35,041	244,504
Shares listed.....	239,330	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Low price.....	27	30	25	28	28	28	30	31	31	34	40	37	.....
High price.....	34	33	31	33	32	31	38	37	41	44	58	58	.....
1905.													
Shares sold.....	150,328	394,675	571,138	292,176	296,062	90,170	120,987	80,280	112,610	141,254	147,116	552,380	2,875,116
Shares transferred.....	19,733	27,515	112,752	319,208	111,571	28,967	18,324	16,514	57,110	18,743	14,000	38,080	752,713
Shares listed.....	301,643	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Low price.....	43	46	12	42	38	39	43	44	41	43	40	44	.....
High price.....	48	54	39	57	47	45	48	47	46	48	49	58	.....
1906.													
Shares sold.....	1,160,745	686,175	648,860	370,840	388,120	577,750	299,100	529,970	199,710	177,915	179,538	390,229	5,538,953
Shares transferred.....	49,050	44,033	46,314	297,138	40,465	41,937	27,962	34,388	26,150	15,557	24,318	53,351	622,816
Shares listed.....	301,320	.....	.....	301,320	.....	.....	301,320	.....	.....	301,320	.....	.....	.....
Low price.....	54	60	57	45	40	44	44	51	52	50	49	51	.....
High price.....	83	78	67	67	57	64	54	61	59	58	57	58	.....
1907.													
Shares sold.....	258,875	121,165	231,450	96,215	58,225	31,565	39,255	59,300	20,760	46,750	24,310	215,170	1,212,040
Shares transferred.....	31,029	21,174	49,475	22,794	18,918	12,580	14,091	22,756	12,232	26,994	30,092	24,439	287,175
Shares listed.....	342,355	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Low price.....	49	42	29	33	27	28	30	22	17	14	14	17	.....
High price.....	54	59	44	38	37	32	33	31	20	20	17	22	.....
1908.													
Shares sold.....	47,110	21,785	95,080	1,290	189,745	26,545	112,315	168,745	101,055	104,945	131,365	163,390	1,363,229
Shares transferred.....	16,681	16,147	17,741	23,154	39,182	20,910	39,246	36,738	39,991	14,954	32,402	27,310	315,486
Shares listed.....	342,355	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Low price.....	19	15	16	22	24	23	24	32	30	33	30	30	.....
High price.....	22	20	24	26	31	29	33	38	37	37	40	42	.....

*Table showing shares of common stock of Colorado Fuel & Iron Co. sold on New York Stock Exchange, shares transferred on company's books, and shares listed on exchange each month, 1906 to 1912, and also range of prices each month—Continued.*

	January.	February.	March.	April.	May.	June.	July.	August.	September.	October.	November.	December.	Total.
<b>1909.</b>													
Shares sold.....	225,885	72,980	56,900	99,185	114,100	177,515	128,900	103,460	80,635	67,450	266,565	112,075	1,505,650
Shares transferred.....	34,346	26,801	27,009	21,651	23,794	33,380	23,677	27,909	52,512	12,948	30,774	22,192	336,993
Shares listed.....	342,355	29	31	35	38	40	43	41	41	43	47	48	
Low price.....	38	29	30	35	42	43	47	48	47	47	52	53	
High price.....	45	40	36	40	42	43	47	48	47	47	52	53	
<b>1910.</b>													
Shares sold.....	111,384	46,220	31,110	22,700	17,125	17,990	17,100	16,820	4,650	22,500	23,350	11,090	342,429
Shares transferred.....	22,658	22,053	11,158	7,003	10,574	7,568	11,068	14,957	6,290	6,734	7,404	5,065	131,432
Shares listed.....	342,355	32	32	32	35	30	22	23	23	31	30	29	
Low price.....	36	32	32	32	35	30	33	32	32	36	36	32	
High price.....	50	40	43	42	39	36	33	32	32	36	36	32	
<b>1911.</b>													
Shares sold.....	18,875	17,520	8,800	400,120	18,100	9,120	7,050	11,400	5,300	2,700	4,900	4,900	509,685
Shares transferred.....	8,154	8,685	3,659	3,543	5,205	4,036	3,255	5,612	5,318	2,805	5,285	3,374	59,032
Shares listed.....	342,355	33	31	29	30	33	33	27	25	25	26	25	
Low price.....	36	36	32	32	35	35	36	33	28	28	29	29	
High price.....	36	36	32	32	35	35	36	33	28	28	29	29	
<b>1912.</b>													
Shares sold.....	2,100	5,750	14,500	64,280	9,350	33,900	7,135	20,800	111,125	50,090	13,400		338,430
Shares transferred.....	6,131	2,425	5,904	4,732	5,562	5,385	14,285	6,015	68,672	5,003	6,676		128,390
Shares listed.....	342,355	23	24	27	27	27	28	30	32	34	32		
Low price.....	26	23	24	27	27	27	28	30	32	34	32		
High price.....	27	24	31	34	30	33	32	34	43	43	43		

Total shares sold for period..... 15,739,611  
Total shares transferred for period..... 3,076,540

Ratio of shares sold to shares listed:

1903.....	2.77
1904.....	5.86
1905.....	9.54
1906.....	18.35
1907.....	3.54
1908.....	4.98
1909.....	1.00
1910.....	1.48
1911.....	.95
1912.....	.02
Whole period.....	5.02

Ratio of shares transferred to shares sold:

1903.....	.252
1904.....	.174
1905.....	.272
1906.....	.112
1907.....	.235
1908.....	.224
1909.....	.383
1910.....	.118
1911.....	.380
1912.....	.195
Whole period.....	.195

## APPENDICES.

231

Shares of common stock of Colorado Fuel & Iron Co. sold each day of the 13 most active months from 1906 to 1912, inclusive—Continued.

Day of month.	October, 1904.	Novem- ber, 1904.	Decem- ber, 1904.	February, 1905.	March, 1905.	April, 1905.	Decem- ber, 1905.
1.....		16,800	15,000	8,700	9,300	6,000	5,100
2.....		18,000	11,500	3,700	10,400		1,900
3.....	750	33,700	3,400	1,900	6,000		
4.....	2,885	36,500		3,300	2,600	25,700	4,300
5.....	950	6,900	13,200	4,200		5,500	9,200
6.....	700		14,900		4,800	7,300	7,100
7.....	700	14,500	38,000	35,000	2,800	4,900	5,200
8.....	250		49,800	13,800	5,400	3,600	4,300
9.....		16,800	18,300	3,000	6,600		1,700
10.....	5,400	18,900	6,300	20,000	20,300	6,600	
11.....	2,620	28,500		50,700	7,900	10,300	7,200
12.....	3,120	10,300	32,300			19,100	72,500
13.....	1,900		16,100		34,600	13,900	66,000
14.....	4,760	22,900	13,300	32,200	17,700	13,500	20,200
15.....	5,600	10,900	8,800	15,300	27,100	2,300	14,500
16.....		15,400	10,200	10,400	23,800		21,700
17.....	8,825	26,700	7,800	11,800	16,600	19,300	
18.....	5,200	14,500		5,500	6,100	51,300	60,700
19.....	16,975	3,300	8,000			21,800	55,000
20.....	18,550		1,600	14,400	14,400	29,600	19,900
21.....	22,600	8,900	7,000	19,700	30,800		15,300
22.....	8,200	45,200	4,300		25,500		23,500
23.....		19,500	2,700	42,600	112,300		3,500
24.....	22,600			7,500	76,400	32,200	
25.....	47,485	40,000		3,100	7,600	12,200	
26.....	27,150	20,600				8,100	31,100
27.....	14,310		2,000	10,400	19,500	14,300	16,700
28.....	10,200	73,200	20,500	17,200	18,500	27,400	19,600
29.....	32,200	49,200	13,000		11,700	9,800	10,000
30.....		15,300	13,000		13,700		
31.....	22,300				17,000		
MONTHLY SUMMARY.							
Shares sold.....	299,205	532,520	353,570	304,675	571,138	392,176	552,380
Shares transferred.....	57,702	72,236	35,041	27,515	112,752	319,208	38,096
Shares listed.....	239,320						
Low price.....	34½	40½	37	46	15½	42½	44½
High price.....	44½	58½	58	54	59	57½	56½

Shares of common stock of Colorado Fuel & Iron Co. sold each day of the 13 most active months from 1906 to 1912, inclusive—Continued.

Day of month.	January, 1906.	February, 1906.	March, 1906.	June, 1906.	July, 1906.	August, 1906.
1						
2	6,700	61,400	26,000	23,100		25,700
3	3,300	34,300	10,700	17,400	22,600	14,100
4	18,300	34,000	9,700		9,200	11,200
5	11,700	26,700	35,000	37,700		12,700
6	5,700	24,100	21,300	37,400	15,800	
7		10,500	38,000	26,800	23,500	9,600
8	30,200	27,000	60,700	19,000	14,700	14,400
9	21,300	11,200	34,800	14,200	16,200	9,300
10	9,400	3,700	14,200		6,500	12,100
11	13,300			17,100	35,500	4,200
12	34,300			16,000	24,800	2,000
13	10,400	9,200	15,100	8,100	9,800	
14		11,600	15,500	26,000	4,400	15,700
15	52,700	33,000	10,500	20,200		13,300
16	61,800	37,700	10,800	5,700	12,500	10,400
17	104,100	20,800	900		6,600	9,500
18	70,600			17,300	6,400	21,100
19	17,200	29,500	18,400	13,500	5,900	13,000
20	15,000	30,500	13,200	12,100		
21		29,200	24,900	32,600	4,300	316,200
22	13,400		17,200	20,500		86,500
23	122,800	15,600	28,100	10,100	13,000	51,200
24	76,300	3,900	2,900		12,100	27,800
25	57,700			32,900	5,500	13,100
26	48,400	8,400	13,900	31,400	36,200	2,700
27	26,800	41,700	30,800	24,400	32,500	
28		4,200	60,300	21,000	11,500	16,000
29	46,100		56,600	18,000		28,300
30	59,900		23,400	4,200		16,900
31	58,000		8,800		19,800	13,100
MONTHLY SUMMARY.						
Shares sold.....	1,160,745	586,175	648,860	577,750	399,100	539,970
Shares transferred.....	69,050	44,603	46,314	41,637	27,965	52,388
Shares listed.....	301,320				301,330	
Low price.....	55½	60	57	44½	44½	51½
High price.....	83½	78½	67½	64½	55½	61½

Table showing shares of common stock of American Smelting & Refining Co. sold on New York Stock Exchange, shares transferred on company's books, and shares listed on exchange each month 1906 to 1912, and also range of prices each month.

APPENDICES.

233

	January.	February.	March.	April.	May.	June.	July.	August.	September.	October.	November.	December.	Total.
1906.													
Shares sold.....	797,100	826,510	785,825	740,975	1,187,560	679,560	619,000	741,550	540,200	690,800	305,200	313,100	8,292,440
Shares transferred.....	27,000	61,000	283,000	51,000	84,000	212,000	37,000	45,000	203,000	90,000	54,000	105,000	1,133,000
Shares listed.....	500,000	1013	1524	1443	1384	1408	1411	151	150	1524	1514	147	.....
Low price.....	10 1/4	10 1/4	10 1/4	10 1/4	10 1/4	10 1/4	10 1/4	10 1/4	10 1/4	10 1/4	10 1/4	10 1/4	.....
High price.....	17 1/4	16 1/4	16 1/4	16 1/4	15 1/4	15 1/4	15 1/4	16 1/4	15 1/4	16 1/4	15 1/4	15 1/4	.....
1907.													
Shares sold.....	338,250	398,152	1,130,170	1,211,440	827,850	426,940	310,710	751,610	861,210	1,187,965	726,575	708,210	8,899,102
Shares transferred.....	35,000	43,000	149,000	71,000	67,000	156,000	56,000	44,000	203,000	84,000	85,000	195,000	1,248,000
Shares listed.....	500,000	1114	1044	1194	1114	1124	1124	1134	1034	844	584	604	.....
Low price.....	11 1/4	11 1/4	11 1/4	11 1/4	11 1/4	11 1/4	11 1/4	11 1/4	11 1/4	11 1/4	11 1/4	11 1/4	.....
High price.....	16 1/4	14 1/4	14 1/4	13 1/4	13 1/4	12 1/4	12 1/4	11 1/4	10 1/4	8 1/4	7 1/4	7 1/4	.....
1908.													
Shares sold.....	1,368,421	779,350	862,158	505,695	1,024,110	328,280	730,090	1,418,150	939,810	512,140	621,680	1,387,300	10,567,524
Shares transferred.....	172,000	90,000	244,000	69,000	96,000	190,000	47,000	96,000	270,000	64,000	69,000	283,000	1,699,000
Shares listed.....	500,000	554	58	66	69	73	76	88	79	83	91	76	.....
Low price.....	500,000	554	58	66	69	73	76	88	79	83	91	76	.....
High price.....	79 1/4	68 1/4	74 1/4	72 1/4	78 1/4	77 1/4	80 1/4	107 1/4	99 1/4	94 1/4	98 1/4	94 1/4	.....
1909.													
Shares sold.....	774,925	426,435	386,410	476,425	301,675	324,065	300,185	723,850	321,545	312,000	539,945	372,280	5,244,370
Shares transferred.....	73,000	62,000	192,000	50,000	54,000	188,000	37,000	81,000	241,000	42,000	70,000	310,000	1,306,000
Shares listed.....	500,000	1,500,000	1,500,000	1,500,000	500,000	500,000	500,000	500,000	500,000	500,000	500,000	500,000	.....
Low price.....	80 1/4	77 1/4	83 1/4	86 1/4	82 1/4	87 1/4	91 1/4	96 1/4	94 1/4	93 1/4	95 1/4	94 1/4	.....
High price.....	89 1/4	88 1/4	89 1/4	91 1/4	95 1/4	97 1/4	98 1/4	104 1/4	101 1/4	101 1/4	105 1/4	105 1/4	.....
1910.													
Shares sold.....	563,295	551,055	510,130	541,405	453,155	310,650	321,020	338,080	166,270	491,865	342,400	281,415	4,880,520
Shares transferred.....	172,000	116,000	204,000	66,000	54,000	141,000	49,000	59,000	101,000	81,000	63,000	141,000	1,149,000
Shares listed.....	500,000	754	784	794	774	784	774	794	684	674	734	704	.....
Low price.....	88 1/4	88 1/4	89 1/4	89 1/4	87 1/4	87 1/4	87 1/4	87 1/4	83 1/4	82 1/4	83 1/4	83 1/4	.....
High price.....	104 1/4	91 1/4	90 1/4	89 1/4	81 1/4	78 1/4	71 1/4	70 1/4	68 1/4	67 1/4	68 1/4	68 1/4	.....
1911.													
Shares sold.....	201,240	188,134	88,020	60,620	159,590	235,675	75,330	245,995	536,285	326,285	421,300	128,350	2,638,014
Shares transferred.....	46,000	44,000	48,000	71,000	38,000	118,000	23,000	55,000	143,000	45,000	34,000	45,000	710,000
Shares listed.....	500,000	724	734	704	714	724	724	724	564	594	614	684	.....
Low price.....	72 1/4	75 1/4	77 1/4	75 1/4	71 1/4	72 1/4	72 1/4	72 1/4	67 1/4	67 1/4	67 1/4	67 1/4	.....
High price.....	79 1/4	81 1/4	81 1/4	79 1/4	79 1/4	83 1/4	80 1/4	79 1/4	71 1/4	67 1/4	74 1/4	75 1/4	.....

<sup>1</sup> Listed on New York Stock Exchange official list Feb. 10, 1909, prior to which date stock was traded on the unlisted department of the same exchange. Shares outstanding were 500,000 during this period.



Shares of common stock of American Smelting & Refining Co. sold each day of the 13 most active months from 1906 to 1912, inclusive.

Day of month.	January, 1906.	February, 1906.	May, 1906.	March, 1907.	April, 1907.	May, 1907.	September, 1907.
1.		61,600	64,000	50,100	61,100	54,800	
2.	9,900	10,900	149,000	9,200	58,900	20,100	
3.	14,000	17,200	77,500		31,700	34,800	37,000
4.	28,000		55,800	52,400	40,400	8,800	41,600
5.	20,300	18,200	20,700	54,650	43,600		41,200
6.	10,300	8,500		60,100	31,400	9,700	34,400
7.		13,600	50,000	21,300		39,250	11,800
8.	19,000	44,300	85,000	33,000	63,700?	15,000	
9.	9,500	21,300	105,700	16,400	98,550	27,200	16,600
10.	10,900	2,100	49,700		64,600	21,900	40,100
11.	10,800		33,300	19,200	96,100	25,170	44,200
12.	1,200		15,600	9,900	47,250		85,500
13.	9,300	32,800		58,600	31,300	22,900	80,400
14.		41,600	82,400	66,900		14,000	29,200
15.	56,800	43,800	91,600	34,800	86,000	21,000	
16.	35,000	88,000	60,600	13,400	54,700	12,200	54,700
17.	89,000	83,400?	36,200		70,100	8,100	42,850
18.	52,300		25,000	32,400	27,550	9,400	36,150
19.	43,800	44,500	3,400	54,245	26,000		56,100
20.	9,300	20,800		81,100	9,100	40,200	44,000
21.		91,200	12,200	59,700		101,600	7,700
22.	36,700		15,300	71,120	73,300	79,800?	
23.	21,100	27,700	34,400	18,000	53,000	37,850	42,200
24.	28,800	7,700	16,500		35,800	31,600	26,700
25.	29,800		17,700	78,400	26,100	7,500	18,550
26.	12,600	15,700	3,200	60,800	15,000		26,900
27.	8,900	25,500		42,300	7,500	48,000	57,400
28.		103,700	7,300	31,130		47,100	24,300
29.	26,500		9,800?	56,000	15,100	24,200	
30.	70,000				39,510		41,500
31.	38,400		2,400			19,300	
MONTHLY SUMMARY.							
Shares sold	797,100	826,510	1,187,560	1,130,170	1,211,440	827,850	861,210
Shares transferred	27,000	61,000	84,000	149,000	71,000	67,000	203,000
Shares listed	500,000						
Low price	161½	153½	138½	104½	119½	111½	84½
High price	174	160	157½	140½	138½	136½	103½

Shares of common stock of American Smelting & Refining Co. sold each day of the 13 most active months from 1906 to 1912, inclusive—Continued.

Day of month.	October, 1907.	January, 1908.	May, 1908.	August, 1908.	September, 1908.	December, 1908.
1.....	38,200		31,100	13,000	23,000	24,101
2.....	36,300	18,300	14,400		42,500	29,400
3.....	45,310	13,000		19,810	89,600	24,800
4.....	16,000	7,400	31,250	31,160	44,400	16,850
5.....	7,800		21,900	46,550		31,300
6.....		26,050	47,800	63,000		
7.....	28,300	34,750	37,950	128,528		57,400
8.....	24,025	22,400	21,500	34,650		21,400
9.....	43,900	37,850	10,200		31,800	18,000
10.....	45,600	68,150		60,400	29,400	24,300
11.....	97,000	22,632	37,900	57,200	28,400	40,400
12.....	42,100		36,440	52,300	15,100	61,400
13.....		58,025	26,700	32,100		
14.....	67,000	79,525	38,500	69,300	31,700	89,100
15.....	45,100	82,550	36,100	50,000	28,800	89,000
16.....	106,900	130,000	28,900		55,470	44,300
17.....	71,100	60,000		60,000	65,440	91,000
18.....	106,000	57,100	31,000	89,300	53,200	184,170
19.....	30,300		26,300	45,300	26,700	57,100
20.....		138,900	134,500	56,300		
21.....	76,050	115,000	104,300	64,000	70,900	76,450
22.....	75,150	42,850	67,700	167,700	61,780	90,000
23.....	34,200	51,900	26,800		30,400	69,300
24.....	36,450	38,700		33,000	38,000	27,400
25.....	13,600	21,900	29,450	87,800	28,100	
26.....	8,100		25,610	21,630	16,700	
27.....		61,450	57,800	23,560		
28.....	17,100	47,100	48,400	41,000	25,400	34,800
29.....	20,800	17,125	15,770	8,300	17,855	40,700
30.....	9,500	20,600			16,400	44,900
31.....	19,200	19,600		25,820		20,500
MONTHLY SUMMARY.						
Shares sold.....	1,187,965	1,368,421	1,024,110	1,418,150	939,810	1,387,390
Shares transferred.....	84,000	172,000	96,000	96,000	279,000	283,000
Shares listed.....	500,000					
Low price.....	61½	62½	69½	88½	79	7½
High price.....	89½	79½	78½	107	90½	9½

Table showing shares of common stock of Consolidated Gas Co., sold on New York Stock Exchange, shares transferred on company's books, and shares listed on exchange each month, 1906 to 1912, and also range of prices each month.

	January.	February.	March.	April.	May.	June.	July.	August.	September.	October.	November.	December.	Total.
<b>1906.</b>													
Shares sold.....	57,348	202,973	333,875	420,506	72,782	100,550	54,175	48,541	10,025	24,100	6,445	16,322	1,315,944
Shares transferred.....	21,313	46,133	78,989	56,355	126,523	10,779	8,801	47,912	5,062	12,722	27,327	9,643	432,140
Shares listed.....	800,000	800,000	800,000	800,000	800,000	800,000	800,000	800,000	800,000	800,000	800,000	800,000	8,000,000
Low price.....	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00
High price.....	38.14	38.14	38.14	38.14	38.14	38.14	38.14	38.14	38.14	38.14	38.14	38.14	38.14
<b>1907.</b>													
Shares sold.....	8,150	13,534	44,152	21,653	35,355	8,600	6,808	19,802	12,195	38,030	11,555	14,010	293,984
Shares transferred.....	15,918	10,000	16,770	13,720	33,175	7,545	6,903	25,417	7,877	23,745	30,408	13,060	211,058
Shares listed.....	800,000	800,000	800,000	800,000	800,000	800,000	800,000	800,000	800,000	800,000	800,000	800,000	8,000,000
Low price.....	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00
High price.....	139	140	140	134	137	121	122	119	99	74	80	90	98
<b>1908.</b>													
Shares sold.....	15,580	6,578	40,216	47,906	70,031	15,995	102,060	91,500	335,413	108,097	338,592	237,737	1,431,743
Shares transferred.....	10,113	19,916	8,069	33,528	53,475	8,271	17,050	44,165	38,532	30,218	100,541	28,609	401,487
Shares listed.....	800,000	800,000	800,000	800,000	800,000	800,000	800,000	800,000	800,000	800,000	800,000	800,000	8,000,000
Low price.....	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00
High price.....	105	103	117	123	129	126	141	134	136	139	142	152	157
<b>1909.</b>													
Shares sold.....	339,219	90,830	8,540	48,875	121,375	64,645	26,570	177,110	78,750	47,000	185,806	265,718	1,431,018
Shares transferred.....	61,663	137,440	33,785	25,817	96,777	20,568	19,664	83,750	26,467	8,477	87,564	42,106	644,078
Shares listed.....	994,795	994,795	994,795	994,795	994,795	994,795	994,795	994,795	994,795	994,795	994,795	994,795	9,947,950
Low price.....	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00
High price.....	117	114	126	130	130	137	139	141	141	143	143	147	147
<b>1910.</b>													
Shares sold.....	324,880	120,255	79,213	77,750	97,820	252,055	180,390	59,163	76,980	156,130	44,525	67,650	1,585,779
Shares transferred.....	183,313	153,031	24,628	31,372	83,617	40,081	40,064	96,303	13,361	34,638	75,622	19,710	658,446
Shares listed.....	997,510	997,510	997,510	997,510	997,510	997,510	997,510	997,510	997,510	997,510	997,510	997,510	9,975,100
Low price.....	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00
High price.....	160	147	145	144	145	141	136	133	134	134	131	130	137
<b>1911.</b>													
Shares sold.....	197,608	89,202	35,048	20,750	46,314	59,400	12,850	58,726	30,290	31,125	114,077	15,131	712,491
Shares transferred.....	46,349	86,434	16,369	13,380	81,131	27,687	10,276	54,053	16,808	12,764	65,128	14,107	444,806
Shares listed.....	998,160	998,160	998,160	998,160	998,160	998,160	998,160	998,160	998,160	998,160	998,160	998,160	9,981,600
Low price.....	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00
High price.....	140	139	140	140	140	140	141	141	141	141	141	141	141

*Table showing shares of common stock of Consolidated Gas Co., sold on New York Stock Exchange, shares transferred on company's books, and shares listed on exchange each month, 1906 to 1912, and also range of prices each month.—Continued.*

	January.	February.	March.	April.	May.	June.	July.	August.	September.	October.	November.	December.	Total.
1912.													
Shares sold.....	61,109	14,350	95,438	42,400	49,884	17,597	66,200	60,300	32,235	48,275	15,449		512,385
Shares transferred.....	20,698	43,071	23,900	22,389	59,132	11,382	16,407	61,765	10,022	13,223	43,603		325,708
Shares listed.....	138½	997 384											
Low price.....	138½	138½	139½	142½	139½	139½	142	144	143½	142	142		
High price.....	140½	140½	146	145½	145½	142½	146½	149½	147½	148½	148½		
Ratio of shares sold to shares listed:													
1906.....	1.72							0.328					7,388,254
1907.....	2.92							.905					3,138,413
1908.....	1.74							.280					
1909.....	1.54							.420					
1910.....	1.60							.410					
1911.....	.72							.638					
1912.....	.51							.420					
Whole period.....	1.16												
Ratio of shares transferred to shares sold:													
1906.....													
1907.....													
1908.....													
1909.....													
1910.....													
1911.....													
1912.....													
Whole period.....													

Total shares sold for period..... 7,388,254  
Total shares transferred for period..... 3,138,413

*Shares of common stock of Consolidated Gas Co. sold each day of the 13 most active months from 1906 to 1912, inclusive.*

Day of month.	March, 1906.	April, 1906.	November, 1908.	December, 1908.	January, 1909.	December, 1909.	January, 1910.
1.	13,100			30,600		8,000	
2.	19,600	35,700	5,645	19,000	3,100	8,000	
3.	1,900	54,600		8,700		18,100	6,500
4.		28,000	3,800	13,800	52,575	17,700	6,700
5.	14,500	11,900	9,752	3,500	35,780		8,000
6.	8,100	6,900	4,265		57,900	5,275	6,800
7.	5,600	5,500	500	14,970	12,250	7,500	11,200
8.	9,500			3,375	9,200	2,000	2,900
9.	5,300	2,700	5,880	7,000	3,200	6,700	
10.	9,100	6,400	2,700	3,600		9,300	6,300
11.		6,300	1,700	12,400	7,670	500	5,300
12.	23,700	18,800	1,850	13,100	4,600		10,300
13.	17,300	18,400	18,700		1,500	4,100	10,450
14.	19,100	4,800	11,300		2,900	1,500	19,900
15.	38,300			6,750	300	600	9,300
16.	35,100	4,400	15,850	4,300	1,100	12,100	
17.	8,500	23,100	7,500	13,000		3,300	17,350
18.		10,400	6,100	8,875	2,600	14,100	17,600
19.	24,500	13,100	21,900	10,250	800		25,800
20.	14,600	10,800	33,510		1,300	38,135	10,400
21.	13,200	1,900	4,300	26,100	450	34,135	15,000
22.	4,200			8,350	1,200	13,600	8,000
23.	6,900	4,300	16,025	4,300		8,900	
24.	1,800	4,100	28,350	4,600		3,600	14,800
25.		28,100	17,320		3,080		24,900
26.	11,200	51,000			46,850		11,600
27.	6,200	18,300	41,100		14,295	9,700	15,900
28.	1,700	4,500	34,750	9,840	9,975	5,300	6,400
29.	30,700			3,800	2,600	11,000	6,300
30.	6,800	13,000	25,200	4,000	1,900	9,100	
31.	6,700			10,760		22,300	12,450
MONTHLY SUMMARY.							
Shares sold.	353,875	420,506	338,562	257,757	339,219	265,718	324,880
Shares transferred.	78,989	56,355	100,541	28,609	63,603	42,106	44,821
Shares listed.	800,000		828,500		994,795		997,810
Low price.	152½	130½	142½	157½	117½	147½	140½
High price.	157½	145	167½	167	165½	162	160½

*Shares of common stock of Consolidated Gas Co. sold each day of the 13 most active months from 1906 to 1912, inclusive—Continued.*

Day of month.	February, 1910.	June, 1910.	July, 1910.	October, 1910.	January, 1911.	February, 1906.
1.....	4,800	11,550	14,100	2,300		
2.....	3,320	5,500		4,500	5,400	100
3.....	11,200	14,900		2,800	9,400	
4.....	7,100	5,200			5,400	
5.....	3,700		8,100	3,800	29,525	400
6.....		16,300	9,000	800	6,400	100
7.....	14,200	11,700	6,200	2,800	11,500	100
8.....	11,500	7,800	8,400	300		100
9.....	6,400	4,700	3,700		8,380	100
10.....	5,300	4,700		400	13,000	100
11.....	4,200	2,725	6,200	3,500	12,400	100
12.....			4,200		7,300	
13.....		3,400	3,800	13,600	5,300	4,700
14.....	4,700	8,400	11,600	8,900	2,700	600
15.....	5,100	4,700	7,300	3,500		100
16.....	11,600	3,300	4,100		2,400	1,200
17.....	7,750	1,800		1,900	9,900	900
18.....	4,800	3,400	10,100	20,900	8,000	
19.....	3,100		2,900	11,400	5,030	400
20.....		5,770	1,700	6,400	11,100	600
21.....	3,400	14,650	8,200	7,300	2,200	300
22.....		11,030	5,050	2,100		
23.....	1,100	19,000	2,000		14,100	9,200
24.....	1,550	15,350		4,900	2,800	30,200
25.....	700	8,400	12,010	3,900	3,900	
26.....	1,300		25,500	7,900	1,200	81,500
27.....		20,600	7,850	22,200	5,600	55,400
28.....	2,200	12,400	11,280	6,200	900	21,400
29.....		15,500	6,300	700		
30.....		23,300	3,200		6,300	
31.....				2,700	4,700	
MONTHLY SUMMARY.						
Shares sold.....	120,255	262,053	180,360	165,130	197,608	202,975
Shares transferred.....	153,031	40,681	40,664	34,636	46,349	46,133
Shares listed.....	997,810	998,090		998,160	998,160	800,000
Low price.....	139	129	122½	132½	135½	150
High price.....	147½	141½	136	138½	143½	141

APPENDICES.

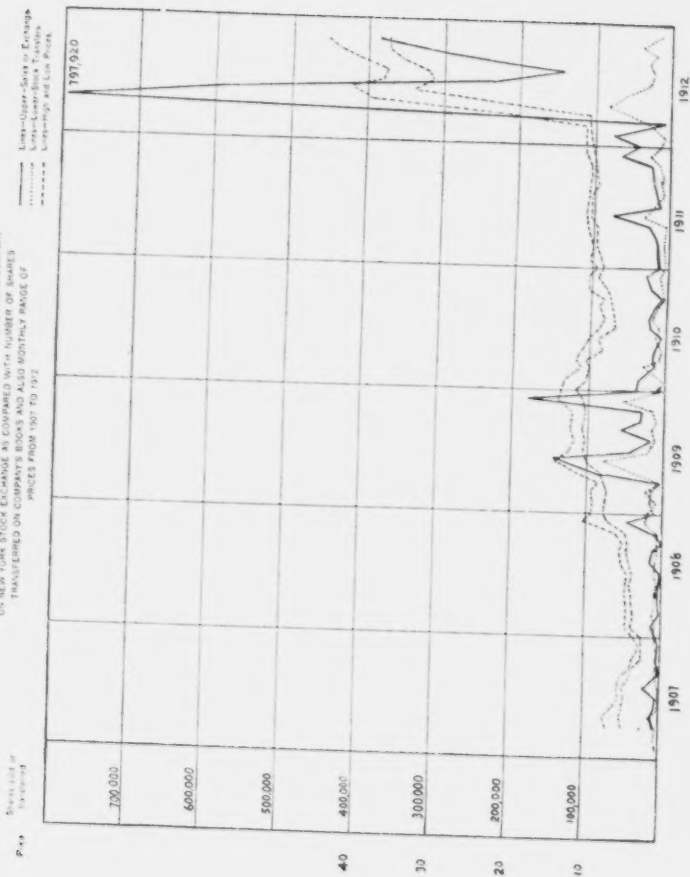
241

	January.	February.	March.	April.	May.	June.	July.	August.	September.	October.	November.	December.	Total.
1907.													
Shares sold.....	2,010	7,510	10,402	4,215	3,037	3,037	33,640	2,185	2,185	6,200	2,000	5,750	77,214
Shares transferred.....	412,333	6,223	12,293	3,330	3,246	3,246	1,610	4,120	2,443	5,358	7,220	7,915	63,902
Low price.....	51	51	51	51	51	51	51	51	41	3	31	31	.....
High price.....	71	71	71	61	61	51	51	51	41	41	31	41	.....
1908.													
Shares sold.....	10,500	2,300	3,150	2,700	1,200	1,200	12,600	10,100	2,650	21,585	53,805	11,910	139,970
Shares transferred.....	8,775	13,438	7,316	4,978	5,202	5,202	6,775	5,888	3,400	9,088	37,301	12,692	124,346
Low price.....	41	41	41	41	41	41	41	41	51	51	71	81	.....
High price.....	51	51	51	51	51	51	61	61	61	71	101	91	.....
1909.													
Shares sold.....	14,480	13,050	7,400	164,480	40,255	40,255	15,020	58,652	37,050	35,355	179,750	43,530	714,722
Shares transferred.....	7,308	22,296	4,981	83,393	26,050	26,050	12,561	19,017	14,431	19,404	82,250	22,907	322,128
Low price.....	71	71	81	101	111	111	111	121	121	111	111	121	.....
High price.....	91	91	81	111	111	131	121	131	131	121	151	141	.....
1910.													
Shares sold.....	40,050	18,850	19,550	7,625	22,470	22,470	25,325	15,350	6,810	25,230	24,250	11,000	244,310
Shares transferred.....	4,916	31,914	12,574	14,300	9,543	9,543	24,617	14,306	5,808	12,655	13,970	8,930	164,929
Low price.....	101	101	101	91	91	91	71	71	71	81	91	91	.....
High price.....	131	111	111	101	101	91	81	91	81	101	101	91	.....
1911.													
Shares sold.....	12,465	12,778	16,640	86,085	11,915	11,915	13,020	18,000	18,370	19,850	67,200	39,985	348,924
Shares transferred.....	412,333	10,285	9,791	32,523	13,040	13,040	5,850	8,650	7,628	10,476	23,834	13,521	147,603
Low price.....	81	91	91	101	101	101	101	0	81	91	101	101	.....
High price.....	101	101	101	121	121	121	111	111	101	101	121	121	.....
1912.													
Shares sold.....	81,125	9,410	423,185	797,920	577,530	243,510	148,500	255,450	305,770	388,875	196,300	3,477,635	.....
Shares transferred.....	5,567	26,217	60,352	80,315	57,472	36,451	23,028	31,022	18,127	36,564	25,214	411,319	.....
Low price.....	111	111	111	201	344	321	331	371	381	381	381	381	.....
High price.....	121	121	231	351	431	381	371	421	451	471	471	471	.....

*Stock listed Feb. 8, 1907.*

Ratio of shares sold to shares listed:		Ratio of shares transferred to shares sold:		Shares sold for period.....		Shares transferred for period.....	
1907.....	0.19	1907.....	0.827	0.827	4,952,775	4,952,775	
1908.....	.34	1908.....	.888	.888			
1909.....	1.73	1909.....	.450	.450			
1910.....	.59	1910.....	.771	.771			
1911.....	.85	1911.....	.423	.423			
1912.....	8.31	1912.....	.120	.120			
Whole period.....	2.01	Whole period.....	.249	.249			

CHART SHOWING MONTHLY SALES OF COMMON STOCK OF AMERICAN CAN COMPANY  
ON NEW YORK STOCK EXCHANGE AS COMPARED WITH NUMBER OF SHARES  
TRANSFERRED ON COMPANY'S BOOKS AND ALSO MONTHLY RANGE OF  
PRICES FROM 1907 TO 1912



*Shares of common stock of American Can Co. sold each day of the 15 most active months from 1906 to 1912, inclusive.*

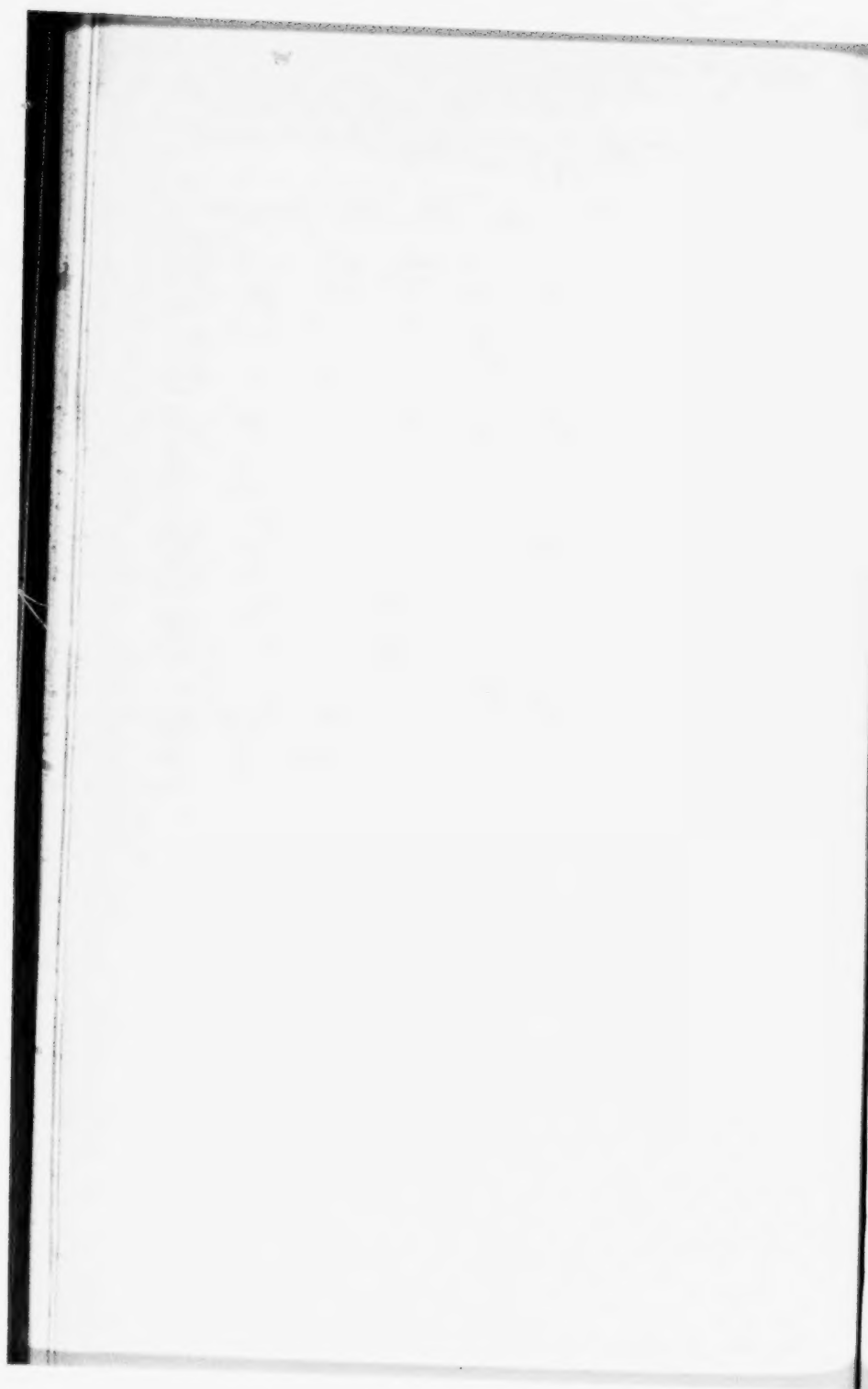
Day of month.	April, 1909.	May, 1909.	Novem- ber, 1909.	May, 1911.	January, 1912.	March, 1912.	April, 1912.
1.....	1,700	600	200	2,530	.....	200	7,800
2.....	1,200	.....	.....	1,500	11,600	3,000	17,000
3.....	.....	1,600	300	2,700	6,350	.....	19,500
4.....	.....	1,100	4,900	1,300	15,500	1,000	27,500
5.....	.....	500	2,300	600	9,000	8,100	.....
6.....	1,200	2,000	300	500	500	3,400	.....
7.....	500	8,600	.....	.....	.....	1,800	.....
8.....	700	4,100	.....	9,500	28,050	2,000	52,515
9.....	.....	.....	21,100	14,600	3,450	16,100	53,800
10.....	.....	25,500	8,900	2,100	225	.....	23,200
11.....	.....	24,600	35,900	2,400	100	16,690	40,900
12.....	2,800	27,510	12,900	1,300	800	5,300	62,400
13.....	400	10,350	2,700	100	100	10,000	30,300
14.....	1,600	9,685	.....	.....	.....	20,600	.....
15.....	4,100	2,600	5,100	900	200	19,500	102,600
16.....	3,000	.....	4,700	3,100	1,000	5,500	60,400
17.....	400	1,750	1,400	6,400	1,700	.....	22,400
18.....	.....	5,410	31,200	1,325	400	24,300	9,600
19.....	700	6,670	9,800	1,000	2,000	13,000	8,400
20.....	7,900	11,800	4,600	300	9,900	26,500	14,400
21.....	11,650	2,400	.....	.....	.....	20,100	.....
22.....	21,200	2,100	7,500	9,800	3,800	14,865	30,000
23.....	12,450	.....	1,400	3,200	9,800	16,800	13,900
24.....	3,200	1,900	1,100	1,400	1,150	.....	37,150
25.....	.....	2,350	.....	200	400	74,800	66,200
26.....	.....	5,365	2,200	1,400	1,000	46,525	24,200
27.....	3,800	1,250	1,000	200	900	15,750	6,000
28.....	2,250	1,700	.....	.....	.....	22,000	.....
29.....	1,000	.....	1,100	.....	600	2,280	12,610
30.....	3,200	.....	3,200	.....	200	5,800	12,600
31.....	.....	.....	.....	500	3,600	.....	.....
MONTHLY SUMMARY.							
Shares sold.....	94,000	164,480	179,750	86,085	81,125	423,185	797,920
Shares transferred.....	37,942	83,363	52,259	32,523	5,567	60,332	89,315
Shares listed.....	412,333	.....	.....	.....	412,333	.....	.....
Low price.....	8½	10	12	10½	11½	11½	20½
High price.....	12	14½	15½	12½	12½	23½	39½

## APPENDICES.

245

Shares of common stock of American Can Co. sold each day of the 13 most active months from 1906 to 1912, inclusive—Continued.

Day of month.	May, 1912.	June, 1912.	July, 1912.	August, 1912.	Septem- ber, 1912.	October 1912.
1.....	28,500					
2.....	46,000		10,400	13,200		13,200
3.....	33,800	8,415	5,800	36,300		27,700
4.....	13,800	13,000	2,300	8,800	4,100	7,100
5.....		16,200	2,800		3,500	13,900
6.....	40,200	18,050	1,700	20,700	2,000	7,800
7.....	41,000	4,400		12,700	1,050	
8.....	23,600	4,600	6,500	9,100	800	20,520
9.....	15,550		8,800	16,700		8,200
10.....	28,300	4,800	8,000	5,600	6,400	12,500
11.....	24,400	21,200	15,400	7,000	7,500	36,700
12.....		7,800	18,500	21,700	7,700	53,000
13.....	12,100	2,800	3,300	15,600	5,100	
14.....	15,400	7,750		6,700	4,600	
15.....	26,100	7,600	6,300	7,800	1,300	22,900
16.....	56,800		8,300	4,600		10,000
17.....	16,700	7,800	5,600	7,100	20,000	4,100
18.....	4,600	2,900	2,200		22,600	2,500
19.....		12,700	5,700	20,200	13,800	4,700
20.....	5,600	33,800	2,400	5,700	63,100	900
21.....	4,300	16,300		2,300	42,100	
22.....	12,900	2,200	2,200	14,500	8,000	10,300
23.....	42,900		700	2,400?		6,000
24.....	12,900	13,500	3,500	700	15,400	27,200
25.....	300	8,100	5,000		8,900	22,000
26.....		11,800	2,800	2,200	19,100	13,000
27.....	5,900	8,100	100	2,100	13,500	3,800
28.....	4,800	2,900		2,200	4,200	
29.....	11,000	10,300	2,300	1,800	6,800	3,610
30.....			1,800	1,700		11,400
31.....	33,900		14,300		13,600	21,925
MONTHLY SUMMARY.						
Shares sold.....	577,530	243,510	148,500	255,450	305,770	388,875
Shares transferred.....	57,472	38,451	23,038	31,022	18,127	36,564
Shares listed.....	412,333					
Low price.....	344	324	334	374	384	384
High price.....	43	384	374	42	434	474



## VIEWS OF THE MINORITY.

---

The undersigned members of the committee appointed under House resolutions No. 429 and No. 504, having as carefully considered the testimony taken in the investigation as the time and circumstances would permit, are of the opinion that the testimony has not disclosed the existence of any so-called Money Trust in this country. It has, however, disclosed a dangerous concentration of credit in New York City and to some extent in Boston and Chicago. Even many of those connected with this concentration of credit who came before the committee expressed the conviction that this concentration had gone far enough and should be checked. Mr. Reynolds, of the Continental and Commercial National Bank of Chicago, stated that in his opinion this concentration, having gone as far as it has, is a menace. Another witness, Mr. Baker, of the First National Bank of New York City, stated in effect that in the hands of bad men it would be dangerous and disastrous to the business interests of the country, and that, in his opinion, the present concentration has gone far enough.

Many abuses are disclosed by the evidence produced before the committee, a number of which are well known to the public and recognized by everybody at all familiar with the business conditions in this country. Abuses on the stock exchange, of quite long standing, were disclosed before the committee, as were also abuses existing in clearing-house associations, especially in New York City.

Evils existing in both stock exchanges and clearing-house associations could be corrected by the exchanges and associations themselves, if they were so inclined. They having failed and neglected to remedy the abuses existing in their conduct and operation, in our opinion it is the duty of each State in which these exchanges or associations are located to compel their incorporation and to regulate their management by appropriate legislation. Should the exchanges and the associations, as well as the various States, neglect this plain and imperative duty, then we believe that it is the duty of Congress to exercise any jurisdiction or power conferred upon the Federal Government by the Constitution to pass such restrictive and regulative legislation as may be necessary. This duty arises from the fact that these evils are not such as affect only the local communities in which they exist, but their results are as broad as the business interests of the country, and affect in their most intimate and important business relations all the people thereof.

While agreeing substantially with the majority upon many of the abuses to be corrected in the financial system, the stock exchanges and the clearing-house associations, the undersigned have doubts as to the wisdom of some of the remedies proposed by the majority to correct these abuses.

The evidence produced was quite voluminous and the hearings were not finally closed until very recently, and we have not had opportunity to carefully weigh this evidence and to consider what reme-

dies are necessary on the part of the Federal Government to correct the conditions which were shown to exist, and therefore we do not feel that we are prepared to fully approve the bills proposed by the majority of the committee. It has been demonstrated by past experience that regulation of the business and financial affairs of the country should be attempted with great care, and should be carried only far enough to remedy known existing evils, and not so far as to become destructive of any of the business interests of the country. We feel that before definitely recommending any remedial legislation, testimony should be taken covering more fully the effect of the various changes in the law that have been suggested.

As it is manifestly impossible that any of the proposed legislation can be considered by this Congress, it seems to us wise to leave the matter of recommending complete remedial legislation to those who will be charged with the responsibility of formulating and reporting such legislation to the Sixty-third Congress.

EVERIS A. HAYES.  
FRANK E. GUERNSEY.  
WILLIAM H. HEALD.



## VIEWS OF MR. McMORRAN.

---

I regret that I have not been able to agree with my colleagues as to the report; my ideas being at wide variance with theirs upon the construction of the evidence and upon the necessary remedies. I also recognize that the method of the investigation has been of an unusual character, entirely different from anything that I have ever witnessed during my experience in Congress. I refer to the agreement under which no member of the committee has been permitted to interrogate witnesses upon subjects material to the investigation.

I have given the testimony in the case careful consideration and have tried to draw my conclusions from an unbiased standpoint, and my conviction is that my conclusions, as embodied in the following report, are correct and for the best interests of the American people.

While I believe that attention has been called in the course of this investigation to grave deficiencies in our financial laws, I also believe that a sinister light has been thrown over many banking practices which was not justified by the facts, that no effort has been made to show the reasonable and commendable explanation of these practices, and that in many cases an impression has been given to the country as to the character and motives of leading bankers which is altogether unfair. A sentiment has been created throughout the country against Wall Street, and many of our good citizens do not realize what it means that New York City has become one of the world's leading money markets, and that the banks of New York and their associates are now able to handle large transactions which they were unable to handle only a few years since, when our people were forced to look to foreign markets for assistance in developing the various industries and commercial undertakings of the country.

I feel that every American citizen should be proud of the fact that we have a city like New York, where there is sufficient capital to handle these enterprises, and should take pride also in the character and integrity of the men who are at the head of its large financial institutions.

### THE CLEARING HOUSES.

As regards the clearing houses, under the present organization of our banking these associations of necessity exercise many important functions and bear many responsibilities which would not be forced upon them under a properly organized banking and currency system. I believe that it is fortunate, in view of the deficiencies in our banking law, that the community has been able to depend upon these associations to maintain proper standards of banking in normal times and to afford relief in times of emergency. I believe that the man-

agement and conduct of these associations have been generally characterized by broadmindedness and public spirit rather than by a selfish desire for personal profit, as the questioning of witnesses frequently implied, and that these associations have rendered inestimable service to the country not only in normal times in providing means for the exchange and collection of checks but particularly in periods of stress in arranging for the mutualization of reserves among the banks, in providing temporary markets for the rediscount of commercial paper and other banking assets, and in otherwise supplying necessary agencies which our banking system at present lacks.

The intimation in some of the questions to witnesses and in certain parts of the report that the members of the clearing-house committees have exercised these powers for the suppression of competing banks is, I believe, unjust and without foundation in fact. In the testimony relating to the Oriental Bank and the Mechanics & Traders Bank I regret very much that the full facts relative to the action of the clearing house toward these institutions was not spread upon the record, and I am inclined to think that had the facts been fully presented a different impression would have been given as to the action taken by the clearing-house committee.

#### THE STOCK EXCHANGES.

I believe that it should also be recognized that the New York Stock Exchange has contributed much to the development of the transportation, industrial, and commercial activities of the country, and that its affairs have been conducted by men of repute and standing in the community, and that judged by the magnitude of its transactions, in the light of the tendency of all men at times to err, it is remarkable that the rules governing its transactions have been so faithfully observed and enforced.

#### THE CONCENTRATION AND CONTROL OF MONEY AND CREDIT.

I believe that much of the evidence in regard to the concentration and control of money and credit submitted to the subcommittee, both statistical evidence and the testimony adduced through the questioning of witnesses, has been seriously incomplete and misleading, and that no such harmony of motive and action has been shown to exist between the dozen or 18 large banks in different cities which have been repeatedly named as would justify the description of these banks as a "group" or as an "inner group," or as would in any way justify the assertion contained in the majority report that "the acts of this inner group, as here described, have been more destructive to competition than anything accomplished by the trusts."

In my opinion the method of argument or inference used in connection with the elaborate charts and tables presented to the committee is wholly mistaken. It is not reasonable to select a list of the largest financial institutions in the leading cities and then to assume that because some of these institutions are associated from time to time in occasional transactions that the whole number constitutes a group following a concerted policy with a united purpose, nor is it

fair to assume that because few transactions of \$10,000,000 or more can be named which have not been handled by one or another of these large institutions (whose names have been selected for this purpose because of their size) that this so-called "group" has suppressed competition.

As to the claim of centralization of the money power in the city of New York, the fact that within the past 10 years the number of banks in the United States has increased from 10,000 to 25,000 certainly demonstrates that competition in banking facilities has increased throughout the country, and the fact that the resources of the New York banks amounted to 23.2 per cent of the country's resources in 1900 and to only 18.9 per cent in 1912 shows that banking growth has been more rapid elsewhere than in New York.

### PROPOSED LEGISLATION.

In regard to most of the proposals for legislation which have been brought to the attention of the committee, I feel bound to affirm my apprehension that their adoption would sound the knell of the national banking system. I believe that the establishment of a Federal system of banking, with uniform laws and regulations throughout the country, marked a distinct and important milestone in our financial history, and I regard the possibility of its discontinuance as a very grave and serious objection to the general character of the legislation proposed.

I believe that there are fundamental defects in our banking laws which require remedy at the earliest possible date, and that many of the banking practices which have aroused apprehension, and to which criticism has been directed in this investigation, are the result of those defects and are likely to disappear when a proper banking and currency system has been established.

I would respectfully submit that the immediate need of the country is for banking legislation upon a general scientific plan, and I sincerely hope that the attention of Congress will not be diverted from these important and fundamental needs by any prior attempt at fragmentary enactments.

### RECOMMENDATIONS OF THE COMMITTEE.

With respect to the specific recommendations of the majority, I desire to submit the following special considerations:

#### SECTION 1, AS REGARDS CLEARING-HOUSE ASSOCIATIONS.

Under the present organization of our banking the associations connected with the clearing houses must perform many functions and exercise great responsibilities which would not be necessary under a proper banking and currency system. With the existing very deficient banking law the community has to depend upon these associations for the protection and maintenance of standards of banking and for financial relief and assistance in emergencies. On this account great care must be exercised in framing any restrictive

legislation in order not to hamper the clearing houses in exercising these functions.

A. *Incorporation and regulation.*—It would be dangerous to give Government officials the ultimate power of decision in all clearing-house questions, first, because immediate action is often necessary in such matters (at the time of the failure of the Walsh banks in Chicago it was only by the concerted action of the clearing-house committee, taken at midnight, upon an hour's notice, that a frightful banking cataclysm in Chicago was avoided); second, because these questions often concern the extension of credit to banks by other banks, and such questions could not be appropriately decided by Government officials. The incorporation of clearing houses in so far as it involved such interference on the part of Government officials would be most harmful. In cases where a decision must be made within a few hours as to the further extension of credit to a bank or as to its exclusion from clearing-house privileges the necessity of delaying until the consent of Government officials could be obtained might work great injury to the other banks connected with the clearing house and to other creditors as well. Moreover, the lack of freedom of action on the part of the clearing-house officials would make it impossible for those who were responsible for the protection of the banking situation in a community to take such action as was immediately necessary.

B. *Admission of all banks.*—The minimum capital qualification for membership in certain clearing houses does not exclude small banks from the facilities of the clearing house, but it is intended as a protection for the other banks by preventing the easy acquisition of membership in a clearing house by dishonest institutions. As already stated, under our present system the clearing-house organizations bear unusual responsibility in maintaining proper standards of banking in their communities and in arranging for mutual assistance among the banks in periods of stress. It is essential, because of those responsibilities, that the association should keep its membership clear of the representatives of questionable and unscrupulous interests. On that account the organization must have the right to prescribe certain qualifications for membership.

C. *Examination of members.*—Unquestionably the employment of clearing-house examiners, which began in Chicago a decade ago and which has been adopted in Kansas City, St. Louis, San Francisco, and a number of other cities, including more recently New York, marked a step in the right direction and has kept the banking situation clearer and stronger in those communities than it ever was before. The criticism which has been raised that these examinations allow certain banks inside information in regard to other banks is invalid in most cities where, under the regulations governing the examination, the members of the clearing-house committee receive no detailed information from the examiner as to the business of particular banks except when those banks are discovered to be in a dangerous condition. It should be borne in mind that in the clearing-house associations each bank has only one vote, regardless of its size, and a bank with \$1,000,000 capital has no less influence than a bank twenty-five or more times its size. If any member has grounds of complaint he can easily submit them to the association, where the majority of banks, which means the smaller banks, have

the power to decide. In the Associated Banks of New York there are 64 members, and it takes a majority of 33 distinct institutions to control the association.

D. *Issuance of clearing-house certificates.*—Here again we have to do with a function which the clearing houses assume only because of the grave defects in our banking law. If our banks had available any reserves of cash or credit to which they could appeal in times of trouble or any market in which they could transmute into cash their solvent assets it would be unnecessary for the clearing-house associations to resort to the makeshift of loan certificates, but in default of such agencies the clearing-house associations have rendered inestimable service during the panics of the last half century or more in preventing the utter collapse of all business. At such times they have organized, through their committees, temporary rediscount markets and have virtually pooled their reserves, and until some other agency for rediscounting and for mutualizing reserves has been provided we shall probably have to resort to these associations in times of financial trouble. As, however, the issuance and acceptance of loan certificates means nothing else than the extension of credit by certain institutions to other institutions, their issue and acceptance and retirement can only be decided upon by the banks themselves and are not within the province of the Government.

E. *Regulation of rates for collecting out-of-town checks.*—The real reason for the establishment of uniform collection charges was never brought out in the evidence. Before the establishment of such charges, when out-of-town checks and drafts were subject to no discount, millions and millions of such paper were sent back and forth from one place to another throughout the country wherever a balance was owing from one bank to another. This caused much needless expense of bookkeeping and kept in ostensible life a vast amount of credit which had no real reason for existence. The establishment of collection charges, by creating a slight discount on such checks, has resulted in the immediate return of checks to the bank upon which they were drawn for payment, and has vastly curtailed the amount of fictitious credit which formerly resulted from their continued and repeated remittance.

In the testimony it was asserted that the charges for the collection of checks by the clearing-house banks of New York City were of an arbitrary character, amounting to 70 cents per thousand. I am not in a position to say that the charge was unreasonable, but it is a matter which should receive the serious consideration of the clearing house. I believe, of course, that the banks are entitled to fair compensation for the collection of out-of-town checks.

F. *The regulation of rates of discount and of interest on deposits, etc.*—The instances where clearing houses have attempted to regulate these rates are extremely rare. Such regulations are not germane to the functions of clearing houses, and I see no reason why they should not be prohibited.

## SECTION 2, AS REGARDS THE NEW YORK STOCK EXCHANGE.

So far as further regulation of the exchanges is required, I believe that such regulation should be exercised by the legislatures of the several States and not by Congress. As measures are now pending before the Legislature of the State of New York covering practically every phase of the existing situation, including the incorporation of exchanges, manipulation, the rehypothecation of securities, etc., the intervention of Congress would seem unwarranted.

The recommendation of the majority that the use of the mails, telegraph, and telephone by the Stock Exchange of New York should be prohibited unless it is incorporated or reorganized in other ways, is, in my opinion, a very drastic and unwarranted recommendation and would tend to create a sentiment throughout the country that the members of the New York Stock Exchange are a group of unscrupulous men. In view of the character of the majority of the men who are charged with the control of the exchange, I believe that they will be able to correct any evils that have been developed, and in my judgment the discipline which can be enforced under the present organization is better and more effective than could be brought about under incorporation.

## SECTION 3, AS REGARDS CONCENTRATION OF CONTROL OF MONEY AND CREDIT

A. *Consolidation of banks.*—It is at least open to question whether the Comptroller of the Currency has not now the authority to prevent the consolidation of national banks, but there is no serious objection to a definite attribution to him of such power.

B. *Interlocking bank directorates.*—No real evil has been shown to result from the existence of such directorates. The adoption of this provision, although it would involve no serious consequence, would deprive certain banks of real advantages which they now enjoy. A man who has broad experience, who knows the standing of all the individuals and firms in a community, may render real service on the boards of various financial institutions, and it is altogether unlikely that he would be retained on such boards if he used his influence to suppress competition or for the advancement of his own selfish interests.

C. *Voting trusts in banks.*—No real evils are shown to have resulted from such voting trusts. No evidence was submitted of such trusts ever having existed in national banks. There is no objection, however, to this legislation.

D. *Cumulative voting.*—This proposition is fraught with great danger. Cumulative voting would give dishonest interests an opportunity to appoint a director in order, perhaps, to accredit themselves by membership on the board of an institution of first-class standing. As a result a reputable bank might find itself with a man upon its board of such character as to discredit the whole institution. Dishonest interests might also use such power to secure information regarding the affairs of a corporation which would be of advantage to its competitors, or in order to make trouble in other directions. No evidence was presented to show that the minority stockholders of any banks suffer from lack of control over the banks.

If there were any way to allow a minority stockholder representation without incurring this very great danger, such a plan would be indorsed.

*E. Security-holding companies as adjuncts to banks.*—Great care must be exercised in framing legislation not to so hamper or restrict the national banks as to stimulate their reorganization under State charter. The banking laws of most States allow the State banks and trust companies to perform kinds of business which the national banking law does not allow. On that account State banks and trust companies have developed very rapidly in the course of the last 15 years as compared with Federal institutions. There are scarcely no advantages to a bank to-day from the possession of a Federal charter. The privilege of holding Government deposits, the tenuous prestige of a Federal charter, the very small profit accruing from note issue are the only advantages, and against these must be set many limitations and disadvantages of other sorts. The organization of subsidiary State banks, trust companies, and security companies, with indissoluble stock ownership between the national banks and the subsidiary company, is a method which has been devised of allowing the stockholders in a national bank to secure some of the profits from the kinds of business allowed to State banks and trust companies without trespassing either upon the letter or the spirit of the law. The assets and liabilities of each institution are distinct from those of the other, and the liabilities of one can not be jeopardized by any impairment of the assets of the other. It would seem, therefore, that this is a legitimate and safe method of extending the functions of national banks without any risk to the creditors.

Since their offices and officers are closely related, or identical, there are certain obvious dangers in the possibility of exchanging loans and assets between the two institutions, and provision should therefore be made for the simultaneous examination of both institutions by Federal and State examiners. This is now the practice in the case of national banks and trust companies that are owned by the same stockholders, but it is not necessarily the case with the so-called security companies which have State charters and which are not subject to State banking supervision. We would recommend the adoption of a requirement for simultaneous examination by the national and State bank examiners in the case of all State chartered institutions owned by the same persons or substantially the same persons who own the stock of a national bank.

*G. Fiscal agency agreements.*—This seems an unnecessary and unjustified interference with the business of large corporations which, like smaller corporations and individuals, must rely upon banks or banking houses for financial advice and assistance. An individual business man generally finds it an advantage to deal continuously with the same bank. If he is a regular customer of the bank in good times as well as in bad times, and if his affairs are thoroughly well known to the banker over a long period of time, he can depend upon the banker much more confidently for assistance, even in periods of general unsettlement, than he could without such permanent relations. With large corporations it is very much the same. It is as good policy for them as for individuals to deal regularly with particular banks which become thoroughly conversant with the details of their

business and which are morally, if not technically, bound to see them through every contingency.

It is of course possible to prohibit fiscal agency agreements, but this would not prevent a corporation from dealing with the banks or bankers that serve him best.

H. *Private bankers as depositaries.*—I see no reason for prohibiting interstate corporations from depositing their funds with private bankers. No evidence has been adduced to show that such corporations have suffered loss by depositing in private banks, nor are they apt to suffer loss in this way, since their deposits are protected not merely by the assets and working capital of those firms, but also by the entire property of all of the partners. If there is any risk in such deposits, it is not clear why the large interstate corporations which may be assumed to be well able to look after their affairs should be singled out for protection rather than the smaller State corporations and individuals.

I. *Banks not to engage in underwritings.*—This seems an unreasonable restriction. Industrial companies and railroads are important factors in our economic life, and they are developed by means of the issue of securities. It would be a mistake to take any such step as would curtail their development.

J. *Investments of banks in bonds.*—I see no reason why national banks should be prohibited from investing more than 25 per cent of their capital and surplus in bonds. The character of thoroughly legitimate and useful banking differs among banks in different localities; it differs from one institution to another, and from time to time in the same institution. Some banks all of the time, and many banks some of the time, find their most useful and profitable service in lending for longer periods of time by means of bonds, and there is no reason why this form of banking should be interfered with. Communities in many cases are more effectively served by investments in bonds than by investments in commercial paper. On this point the committee entirely overlooks the fact that it may be of greater ultimate advantage to a merchant to have the transportation facilities of his city increased than to have a little readier market for his own notes. It might perhaps be of advantage to limit the amount of bonds of a particular corporation which may be held by a bank to a certain proportion of the capital and surplus, but legislation is scarcely necessary for this purpose. If bank examinations are properly conducted, excessive holdings of particular securities would be prevented.

K. *Reform of railroad organization.*—Any plan by which the holder of a single share can defeat an undertaking is open to the serious objection that it gives a power which may be easily abused to dishonest persons who make a practice of blackmail. Several notable instances have been cited in the testimony of individuals who make a practice of purchasing single shares of stock merely to make trouble for the majority stockholders.

L. *Railroad reorganization under supervision of Interstate Commerce Commission.*—I see no objection to this proposal beyond the obvious fact that the commission is already overburdened with duties.

M. *Interstate railroad security issues under supervision of Interstate Commerce Commission.*—The objection just mentioned applies even more pertinently here. The Interstate Commerce Commission

already has enough to do without passing upon these matters. Such issues often have to be made quickly, and the delay incident to their reference to this commission might be very harmful.

N. *Competitive bidding for interstate security issues.*—This plan would probably work satisfactorily in times of easy money when banking houses were searching for business, but in periods of tight money and unsettlement large corporations might find themselves in very serious straits, and either quite unable to obtain necessary financial aid, or able only to obtain it at tremendous loss. As already said, a corporation in its relation with a bank is like an individual customer in that if it deals continually with the same bank it is sure of accommodation in periods of general stress as well as in time of prosperity, and is certainly in a position to secure better advice and fairer terms on the average than a corporation that is only an occasional customer.

O. *Borrowings by officers from their own banks.*—This prohibition of such borrowing is wise and to be commended.

P. *Borrowings by directors from their own banks.*—A provision that borrowings by directors should only be permitted on condition that notice shall have been given to the codirectors is not objectionable, but the suggestion that the Comptroller of the Currency should give full publicity in his annual report to every such loan is thoroughly objectionable. The directors of most banks are the best customers of those banks. It would be unjustified and unwise to restrict them in this way or to prevent them from doing business with their banks.

Q. *Borrowing by officers of another bank.*—I see no reason for prohibiting such borrowing. It would interfere with the quite legitimate practice by which bank officers to-day acquire interests in their banks by means of loans from other banks, a practice to be encouraged, as it increases the interest of the officers in the bank.

R. *Financial transactions of bank officers to be in their own names.*—I see no objection to this proposal.

S. *Participation by bank officers and directors in underwritings.*—This provision seems wise in so far as officers of banks are concerned, but not as regards directors. The directors of most banks are the best customers of those banks, and as the directors have very little or nothing to do with the determination of the daily business of banks, there seems no sufficient reason for preventing them in this way from engaging in transactions in which the bank is interested.

T. *Accepting and offering rewards for bank loans.*—This seems an altogether proper regulation.

U. *Limitation of number of directors of banks.*—A provision of this sort would probably make the directors more active and more responsible. On the other hand, it doubtless would work injury to certain banks whose directors at present bring business to the institutions. I do not feel that this provision is of great importance, but, on the whole, am inclined to recommend it.

V. *Publicity for assets and stockholders of banks.*—It is doubtful whether anything would be gained by requiring the publication of the stockholders of banks. Depositors can not know much about the actual property holdings of the shareholders. The names of the directors are published, and, in general, include the largest stockholders. Their standing is known, and the character of the bank is

determined by it. The publication of the stockholders of banks would probably be offensive to many individuals who do not like to have their private affairs made public, and to that extent the publication would tend to depress the value of bank stocks. In case of the failure of a bank, the publicity of the names of stockholders might possibly result in apprehension with regard to their solvency because of their double liability, and it might thereby entail far-reaching unsettlement. One result of such a provision would be the insertion of many fictitious names on the stockholders' list, which, in view of the double liability of stockholders, would be unfortunate. On the whole, we are not inclined to recommend this proposal.

As regards the publication in detail of security holdings, it would be objectionable and it might be dangerous to enforce such requirement. If, for instance, a bank happened to hold the securities of a corporation which failed, and the public was aware of those investments, a run upon the bank might result even though the loss did not in the least jeopardize the deposits or other liabilities of the bank. The public, in other words, must be protected from itself. The one and only justification for secrecy in banking matters is that a little knowledge is apt to be a very dangerous thing. It is unquestionably dangerous for those who do not know all about a bank's condition to know too much. It is sufficient that the bank examiners and the directors are familiar with those details. The depositor and the individual stockholder must put their trust in the directors and officers and examiners. If the Comptroller of the Currency and his examiners can not safeguard the public in this matter, the comptroller's office might as well be abolished.

Respectfully submitted.

HENRY MCMORRAN.

419 The President of the United States of America to William Henkel, United States Marshal for the Southern District of New York, Greeting:

We command you, that you have the body of George G. Henry, which you imprisoned and detained, as it is stated, together with the time and cause of such imprisonment and detention, by whatsoever name the said George G. Henry is called or charged, forthwith before the District Court of the United States for the Southern District of New York, at the United States Courts and Post Office Building, in the Borough of Manhattan, City of New York, to do and receive what shall then and there be considered concerning said George G. Henry; and have you then and there this writ.

Witness, Hon. George C. Holt, Judge of the District Court of the United States, this 7th day of March, 1913.

[Seal U. S. District Court, S. D. of N. Y.]

ALEX GILCHRIST, JR., *Clerk.*

Let the foregoing writ issue.

JULIUS M. MAYER,  
*United States District Judge.*

The hearing on the above writ is hereby adjourned to March 20, 1913, at 2 p. m. The time of the Marshal to make return to or any motion with respect to the writ is hereby extended to the 20 day of March 1913. In the meantime, the petitioner may be admitted to bail in the sum of \$2,000. Bail may be taken by any commissioner.

Dated the 7 day of March, 1913.

JULIUS M. MAYER,  
*United States District Judge.*

420 [Endorsed:] United States District Court, Southern District of New York. George G. Henry, Petitioner, vs. William Henkel, United States Marshal for the Southern District of New York. In the Matter of the petition of George G. Henry for a writ of habeas corpus. Writ of habeas corpus.

421 District Court of the United States, Southern District of New York.

UNITED STATES  
vs.  
GEORGE G. HENRY.

SIRS: Please take notice that upon all the proceedings had herein before Commissioner Shields and upon the commitment issued to the United States Marshal for the Southern District of New York, dated March 7, 1913, the undersigned will apply to the Judge holding the general motion calendar of the United States District Court

appointed to be called on Friday, March 14, 1913, at 10:30 A. M., in the Federal Building, Borough of Manhattan, City of New York, for a warrant for the removal of George G. Henry from the Southern District of New York to the District of Columbia, pursuant to the provisions of Section 1014 of the Revised Statutes.

Dated: March 8, 1913.

Yours, etc.,

HENRY A. WISE,  
*United States Attorney.*

To Messrs. Cravath & Henderson, Attorneys for George G. Henry, 52 William Street, New York, N. Y.

422 [Endorsed:] U. S. District Court, Southern District of New York. United States versus George G. Henry. Notice of Motion for Warrant of Removal. Henry A. Wise, United States Attorney, Attorney for U. S. Copy received Mar. 8, 1913. Cravath & Henderson, Attorneys for ——. U. S. District Court. Filed Mar. 28, 1913. S. D. of N. Y.

423 District Court of the United States, Southern District of New York.

GEORGE G. HENRY, Petitioner,  
vs.

WILLIAM HENKEL, United States Marshal for the Southern District of New York.

SIRS: Please take notice that William Henkel, United States Marshal, will apply to the Judge holding the general motion calendar of the United States District Court appointed to be called on Friday, March 14, 1913, at 10:30 A. M., in the Federal Building, Borough of Manhattan, City of New York, for an order quashing the writ of habeas corpus granted herein on March 7, 1913, upon the papers upon which said writ was granted.

Yours, etc.,

HENRY A. WISE,  
*United States Attorney.*

Dated: March 8, 1913.

To Messrs. Cravath & Henderson, Attorneys for Petitioners, 52 William Street, New York, N. Y.

424 [Endorsed:] United States District Court, Southern District of New York. George G. Henry, Petitioner, versus William Henkel, United States Marshal for the Southern District of New York. Notice of Motion to Quash Writ of Habeas Corpus. Henry A. Wise, United States Attorney, Attorney for U. S. Copy Received Mar. 8, 1913. Cravath & Henderson, Attorneys for ——. U. S. District Court. Filed Mar. 28, 1913. S. D. of N. Y.

425 United States District Court, Southern District of New York.

GEORGE G. HENRY, Petitioner,

vs.

WILLIAM HENKEL, United States Marshal for the Southern District of New York.

In the Matter of the Petition of GEORGE G. HENRY for a Writ of Habeas Corpus.

To the United States District Court for the Southern District of New York:

I, William Henkel, United States Marshal for the Southern District of New York, do hereby make the following return to the Writ of Habeas Corpus herein issued out of the District Court of the United States for the Southern District of New York on the 7th day of March, 1913.

I. That, in obedience to said writ the body of George G. Henry was produced in Court, on March 7th, 1913, and said George G. Henry was admitted to bail pending the argument on said writ.

II. George G. Henry named in said writ of Habeas Corpus, was taken into custody by me on the 7th day of March, 1913, under a commitment issued to me by John A. Shields, Esquire, 426 United States Commissioner for the Southern District of New York, dated March 7th, 1913, a copy of which commitment is annexed to the petition for Writ of Habeas Corpus and marked "A."

III. That said commitment is annexed to a warrant issued to me by John A. Shields, Esquire, United States Commissioner for the Southern District of New York, dated February 14th, 1913, commanding me to apprehend George G. Henry, named in said Writ of Habeas Corpus, and to bring his body forthwith before said Commissioner, that he may be dealt with according to law for the offence charged against him, a copy of which warrant, with the endorsements thereon, is annexed to the petition for writ of Habeas Corpus and marked "E."

IV. That referred to in said warrant and annexed thereto, is a copy of a complaint, on removal, made before said John A. Shields, Esquire, Commissioner, for the Southern District of New York sworn to the 14th day of February, 1913, a copy of which complaint is annexed to the petition for writ of Habeas Corpus and marked "B."

Wherefore respondent prays that said Writ of Habeas Corpus may be dismissed and that said George G. Henry be remanded to the custody of respondent to be dealt with according to law.

Dated, New York, March 19th, 1913.

WILLIAM HENKEL,  
*United States Marshal, Southern  
District of New York.*

## 427 SOUTHERN DISTRICT OF NEW YORK, ss:

William Henkel, being duly sworn, says, that he is United States Marshal for the Southern District of New York; that the foregoing return is true to the knowledge of deponent.

WILLIAM HENKEL.

Subscribed and Sworn to before me this 19th day of March, 1913.

ALEX. GILCHRIST, JR.,

U. S. Comm'r.

428 [Endorsed:] United States District Court, Southern District of New York. George G. Henry, Petitioner, vs. William Henkel, United States Marshal for the Southern District of New York. Return to Writ of Habeas Corpus. Henry A. Wise, United States Attorney, Attorney for Resp't.

429 In the District Court of the United States for the Southern District of New York.

GEORGE G. HENRY, Petitioner,

vs.

WILLIAM HENKEL, United States Marshal for the Southern District of New York.

In the Matter of the Petition of GEORGE G. HENRY for a Writ of Habeas Corpus.

The above-named petitioner, George G. Henry, in answer to the return of William Henkel, United States Marshal for the Southern District of New York, to the writ of habeas corpus herein, respectfully shows that the commitment returned by the said William Henkel, Marshal as aforesaid, as the cause of your petitioner's detention, is void and of no effect, and was issued in violation of your petitioner's rights, privileges and immunities under the Constitution and laws of the United States, for the reasons set forth in the petition for the issuance of the said writ, to which your petitioner here now refers with the same force and effect as though the said petition were incorporated herein and set forth at length.

Wherefore your petitioner prays for an order discharging him from the custody of the said Marshal.

Dated the 25th day of March, 1913.

CRAVATH & HENDERSON,

Attorneys for the Petitioner.

430 UNITED STATES OF AMERICA,

Southern District of New York, ss:

George G. Henry being duly sworn deposes and says that he has read the foregoing traverse and knows the contents thereof, and that the same is in all respects true.

GEORGE G. HENRY.

Sworn to before me this 25th day of March, 1913.

JOHN A. SHIELDS,  
*U. S. Commissioner.*

431 [Endorsed:] United States District Court, Southern District of New York. George G. Henry, Petitioner, vs. William Henkel, United States Marshal for the Southern District of New York. In the Matter of the Petition of George G. Henry for a Writ of Habeas Corpus. Traverse. U. S. District Court, S. D. of N. Y. Filed Mar. 28, 1913.

432 At a Stated Term of the District Court of the United States for the Southern District of New York, at the United States Courts and Post-Office Building, in the Borough of Manhattan, City of New York, on the 28th Day of May, 1913.

Present: Hon. Julius M. Mayer, Judge.

GEORGE G. HENRY, Petitioner,  
against

WILLIAM HENKEL, Marshal for the Southern District of New York.

In the Matter of the Petition of GEORGE G. HENRY for a Writ of Habeas Corpus.

A writ of habeas corpus having been issued herein on the 7th day of March, 1913, upon a petition filed herein on the said last mentioned day, commanding the above named William Henkel, United States Marshal for the Southern District of New York, to produce the body of the said George G. Henry forthwith before this Court, and the said George G. Henry having been on the 7th day of March, 1913, produced before this Court in obedience to the command of the said writ, and the hearing on the said writ having been thereupon adjourned and the time to make return thereof or any motion in respect thereto extended to the 20th day of March, 1913, and the petitioner having been in the meantime admitted to bail to abide the determination of this Court, and the said William Henkel,

433 kel, United States Marshal as aforesaid, having on the said 10th day of March, 1913, made return of the said writ, and having also moved to quash the same, and the petitioner having filed his answer to the said return, and the cause having thereupon come on for hearing and argument having been made thereon by the Hon. John C. Spooner of counsel for the petitioner in support of the said writ, and by John E. Walker, Esq., an Assistant United States Attorney for the said district in opposition thereto,

Now on reading and filing the said writ of habeas corpus and the said petition and return and the answer to the said return and notice of the said motion to quash, and due deliberation being had thereon, on motion of H. Snowden Marshall, Esq., United States Attorney for the Southern District of New York, it is

Ordered that the said writ of habeas corpus be and the same

hereby is discharged and that the petitioner be and he is hereby remanded to the custody of the said William Henkel, United States Marshal as aforesaid.

JULIUS M. MAYER, *D. J.*

434 [Endorsed:] United States District Court, Southern District of New York. George G. Henry, Petitioner, against William Henkel, Marshal for the Southern District of New York. In the Matter of the Petition of George G. Henry for a Writ of Habeas Corpus. Order Discharging Writ and Remanding Petitioner. Cravath & Henderson, Attorneys for Petitioner, No. 52 William Street, Borough of Manhattan, New York City. U. S. District Court, S. D. of N. Y. Filed May 28, 1913.

435 United States District Court, Southern District of New York.

GEORGE G. HENRY, Petitioner,  
vs.

WILLIAM HENKEL, United States Marshal for the Southern District of New York.

John C. Spooner, Paul D. Cravath, John D. Lindsay and Stuart McNamara, all of New York City, for petitioner.

Henry A. Wise, United States Attorney, and John E. Walker, Assistant United States Attorney, for respondent.

MAYER, *District Judge:*

On February 10, 1913, petitioner was indicted by the Grand Jury of the Supreme Court for the District of Columbia, charged with an offense under section 102 of the Revised Statutes, in that on January 7, 1913, while a witness before a Committee of the House of Representatives, acting under a resolution duly passed by the House, he refused to answer certain questions propounded to him on behalf of the Committee which questions were pertinent to the matter under inquiry by the said Committee.

The usual proceedings for removal to the District of Columbia under section 1014 of the Revised Statutes, were instituted  
436 and the United States Commissioner found probable cause and committed the petitioner to the custody of the Marshal to await a warrant of removal. Thereupon a writ of habeas corpus was issued to inquire into the legality of petitioner's detention.

In the proceedings before the Commissioner, petitioner demanded an examination and after the denial of a motion for the dismissal of the complaint, the Government introduced in evidence the indictment and bench warrant and petitioner's identity being conceded, the Government rested.

Petitioner then moved again for the dismissal of the complaint and after the denial of that motion, counsel for petitioner introduced in evidence a transcript of petitioner's entire testimony before the House Sub-committee and the majority and minority re-

ports of that Sub-committee. No question of fact is involved and the sole inquiry is as to whether there existed "probable cause" to justify the issuance of the warrant.

On April 25, 1913, the House of Representatives adopted House Resolution No. 504, which is set forth at length in the indictment and need not be here repeated.

That resolution authorized an inquiry into many subjects, "as a basis for remedial and other legislative purposes." One of the subjects was the relation of national banks in various directions and, in that connection, inquiry was made in regard to transactions in which officers of such banks engaged as affecting, among other things, the actions of banks in regard to loans, the listing of securities on the New York Stock Exchange, the distribution of securities and the participation in syndicates or underwritings of officers of national banks.

It is unnecessary to consider whether Congress had power to inquire into certain of the subjects referred to in the resolution, for it is apparent that Congress had full authority to inquire into the matters set forth in paragraph "Second" of the resolution in so far as they related to national banks.

In the course of this inquiry, the petitioner was questioned and testified at considerable length concerning a corporation called California Petroleum Corporation, (hereinafter referred to as California Company). The details of this inquiry are too lengthy to be recited in this memorandum and it will suffice to state that there came a time in the course of the inquiry when petitioner was asked the names of national banks and officers of national banks who participated in the syndicate operations (described in the testimony) of the California Company. It appeared that there were four partners in this syndicate and the petitioner declined to state the name of the fourth partner in the syndicate.

From the indictment, as well as the testimony of the petitioner, it seems that he had stated that no national bank had participated in the syndicate so that there were really but two questions which he refused to answer.

Section 102 of the Revised Statutes reads as follows:

"Sec. 102. Every person who, having been summoned as a witness by the authority of either House of Congress, to give testimony or to produce papers, upon any matter under inquiry before either House, or any Committee of either House of Congress, wilfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than one thousand dollars nor less than one hundred dollars, and imprisonment in a common jail for not less than one month nor more than twelve months."

It is unnecessary to consider certain questions raised as to the extent to which the court may go in a proceeding of this character for there can be no doubt that the court may examine all the evidence before the Commissioner with a view to determining whether "probable cause" existed and if, in this particular case, either of the

refusals of petitioner to answer was in respect of a question "pertinent to the question under inquiry," then the technique of procedure becomes unimportant.

The petitioner urges that no offense is charged because the subcommittee was without authority, under the Constitution, upon an inquiry purely in aid of legislation, to compel any testimony concerning the California Petroleum Syndicate, and in the interesting

brief submitted on his behalf, many decisions are collated and discussed. I think, however, that the question under consideration is not as far-reaching as the petitioner contends.

Congress had power to ascertain whether a national bank participated directly or indirectly in the organization of California Company, or the listing of its securities or the participation in any underwriting or syndicate relating to such securities.

Surely such an inquiry would not be an exercise of the visitatorial powers which Congress has vested in courts of justice and in the Comptroller of the Currency.

An examination of the National Banking Act will show that Congress has affirmatively permitted and affirmatively prohibited certain kinds of transactions and these provisions are presumably based upon appropriate information and the result of judgment and experience. With many changes in industrial conditions, and in methods of business and, with the increasing and complex problems affecting the National Banking System, Congress could inform itself of the course of conduct of officers of national banks as affecting the banks, to determine whether such course should be thereafter continued, modified or prohibited.

How far Congress could pursue its inquiry, need not at this time be academically considered.

We are concerned only with a particular question asked of the petitioner which he refused to answer.

Certainly, the Committee could receive such testimony as the petitioner was willing to give. He had already testified without objection that there were fifteen national bank officers who were members of the Syndicate and also that it was customary to offer syndicate participation to national bank officers and sometimes to national banks themselves.

In asking the petitioner the names of these national bank officers, the Committee did not at that point ask a question which can be construed as encroaching upon the domain of visitatorial power. The Committee in that question, made no inquiry as to the details of any transactions about the national banks but solely about the officers.

Petitioner contends that if Congress deemed this practice an evil it already had the information needed to frame legislation in respect thereof and that the further knowledge of the identity of the particular officers could not help. Whether the Committee could have made further inquiry through such officers as to collateral loans or other affairs of the banks of which they were officers, presents a question which need not be decided because such a line of inquiry is not here to be passed upon. The sole question was the identity of these national bank officers.

441 The fact that the Committee had already heard testimony to the effect that such officers engaged in participation, did not preclude the Committee from obtaining cumulative information upon that point.

The Committee may have considered it desirable to make this inquiry in numerous instances, with a view of ascertaining whether such participations were engaged in frequently and throughout the country, or only by the same set of officers of the same national banks, or whether such engagements were only occasional. As a result of such an inquiry Congress may have drawn conclusions upon which to base legislation.

In point of fact, the Committee did recommend that officers and directors of national banks should be prohibited from participating in syndicates or promotions or underwritings of securities in which their banks may become interested as underwriters or owners or lenders; but even though the Committee made this recommendation upon the testimony before it, it may very well have determined to cite this (and other instances) in support of its conclusions and recommendations.

The official conduct of national bank officers is regulated by statute; a national bank springs into existence solely as a creature of statute and while not attempting to define the extent or the limits of a Congressional inquiry, it certainly cannot be said that this particular question invaded the constitutional rights of this petitioner.

Whether the petitioner could have been compelled to answer the question as to who was the fourth member of the Syndicate, presents a proposition quite different from that just discussed and in that regard no opinion need now be expressed.

Finally, it seems to me that the controversy is really within a narrow compass so far as this proceeding is concerned and as one of the questions seems to have been pertinent, probable cause existed and the commissioner should be sustained.

The writ will be discharged, the petitioner remanded to the custody of the Marshal, and a warrant of removal will issue.

JULIUS M. MAYER, D. J.

May 26, 1913.

443 District Court of the United States for the Southern District of New York,

GEORGE G. HENRY, Appellant,  
against

WILLIAM HENKEL, Marshal for the Southern District of New York.

In the Matter of the Petition of GEORGE G. HENRY for a Writ of Habeas Corpus.

The petitioner and appellant above named, feeling himself aggrieved by the final order made and entered herein by this Court on the 28th day of May, 1913, discharging the writ of habeas corpus

heretofore sued out by him and remanding him to the custody of the said William Henkel, United States Marshal as aforesaid, now comes by Cravath & Henderson, his solicitors and counsel, and petitions the Court for an order allowing him to prosecute an appeal on the said final order to the Supreme Court of the United States, according to the laws of the United States in that behalf made.

The petitioner is advised by counsel that there are grave doubts as to whether the proceedings referred to in the petition herein have not infringed the rights of the petitioner under the Constitution and laws of the United States, and whether his detention under  
444 and by virtue of the mandate and by virtue of the commitment referred to in the petition is not wholly without authority of law, and the petitioner desires in good faith to submit constitutional questions involved herein and such other questions as are presented to the Supreme Court of the United States for their determination; and for the leave asked herein your petitioner will ever pray, etc.

Dated, New York, May 28th, 1913.

G. G. HENRY, *Petitioner*.

Cravath & Henderson, Attorneys for Petitioner, 52 William Street, Borough of Manhattan, City of New York.

UNITED STATES OF AMERICA,  
*Southern District of New York, ss:*

George G. Henry, the petitioner above named, being duly sworn, deposes and says; that he has read the foregoing petition and knows the contents thereof; that the same is in all respects true.

G. G. HENRY.

Sworn to before me this 28th day of May, 1913.

JULIUS M. MAYER, *D. J.*

The foregoing petition and appeal is granted, and it is

Ordered that pending determination of the said appeal and after decision thereon and until the further order of this Court all proceedings herein and all proceedings for the removal of the petitioner to the District of Columbia under and by virtue of the proceedings referred to in the petition for a writ of habeas corpus herein,  
445 be and they are hereby stayed; and it is further

Ordered that pending the said appeal the said George G. Henry be released on bail to await the decision and the determination of the said appeal. Supersedeas bond fixed at Two Thousand Dollars (\$2,000.00). Let any United States Commissioner take bond accordingly.

Dated, May 28th, 1913.

JULIUS M. MAYER,  
*United States District Judge.*

446 [Endorsed:] United States District Court, Southern District of New York. George G. Henry, Appellant, against

William Henkel, Marshal for the Southern District of New York. In the Matter of the Petition of George G. Henry, for a Writ of Habeas Corpus. Petition and Order Allowing the Appeal, etc. Cravath & Henderson, Attorneys for Petitioner No. 52 William Street, Borough of Manhattan, New York City. U. S. District Court. Filed May 28, 1913. S. D. of N. Y.

447 District Court of the United States for the Southern District of New York.

GEORGE G. HENRY, Appellant,  
against

WILLIAM HENKEL, Marshal for the Southern District of New York.

In the Matter of the Petition of GEORGE G. HENRY for a Writ of Habeas Corpus.

Comes now the petitioner and appellant, George G. Henry, by Cravath & Henderson his attorneys and counsel, and in connection with his petition for the allowance of an appeal to the Supreme Court of the United States from the order of this Court entered the 28th day of May, 1913, discharging the writ of habeas corpus heretofore sued out by him and remanding him to custody, makes and files the following assignment of errors:

The Court erred:

(1) In discharging the said writ of habeas corpus and remanding the petitioner to custody.

(2) In holding that the petitioner's restraint and detention under the commitment mentioned in the petition was not without authority of law.

(3) In holding that the petitioner was not deprived of his liberty under the said commitment in violation of his rights, privileges and immunities under the Constitution and Laws of the United States.

448 (4) In holding that John A. Shields, Esq., the Commissioner who issued the said commitment was not without authority, power or jurisdiction under the Constitution and Laws of the United States by reason of any of the matters and things contained and set forth in the complaint mentioned in the said petition or in the indictment therein mentioned, or either of them, or by reason of anything presented or adduced upon the examination before the said Commissioner, to entertain any charge against the petitioner or to act or proceed in any manner in the premises.

(5) In refusing to hold that at the time the petitioner attended before the sub-committee of the Committee on Banking and Currency of the House of Representatives and gave his testimony before it, and at the time he refused to answer the questions which are set forth in the said indictment, the said sub-committee was engaged in no investigation or inquiry and was conducting no proceeding upon which the petitioner could be required or com-

312  
pelled under the Constitution and Laws of the United States to testify or give evidence before the said sub-committee.

(6) In holding that the resolution of the House of Representatives of April 25, 1912, directing the investigation and inquiry in and upon which the petitioner was examined as a witness before the said sub-committee, known as House Resolution No. 504, was not passed and adopted without and in excess of any power conferred upon the House of Representatives by the Constitution of the United States.

449 (7) In holding that the passage and adoption of the said resolution did not constitute an encroachment upon the powers conferred by the Constitution on the judicial branch of the Government.

(8) In holding that in conducting the investigation and inquiry thereby directed, the said sub-committee did not assume a power which could only be exercised by the judicial branch of the Government.

(9) In holding that the said resolution, in so far as it undertook to require the petitioner to testify as a witness before the said committee in respect of the transactions, matters and things concerning which he was interrogated by and before the said committee beyond what he voluntarily chose to tell, and particularly in so far as it undertook to compel the petitioner to testify before the said committee of and concerning the names of officers of national banks who had participated in the syndicate operations of the California Petroleum Company referred to in the said indictment, was not passed and adopted without and in excess of any power vested in the House of Representatives by the Constitution.

(10) In holding that the said resolution conferred upon the said sub-committee any power or jurisdiction to require or compel the petitioner to answer any of the questions which were propounded to him upon his examination before the said sub-committee.

(11) In holding that the matters sought to be elicited by the questions which the petitioner refused to answer when interrogated before the said sub-committee, were and are not the petitioner's personal and private affairs.

450 (12) In holding that the matters sought to be so elicited were not matters in respect of which neither the House of Representatives nor the said sub-committee had nor can have under the Constitution any right, power, jurisdiction or authority whatsoever to compel the testimony of the petitioner solely in aid of the legislative function.

(13) In holding that the said resolution in so far as it undertook to authorize the said sub-committee to inquire of and concerning the names of officers of national banks who had participated in the syndicate operations of the California Petroleum Company, was not passed and adopted in violation of Title LXII of the Revised Statutes and was not for that reason wholly null and void.

(14) In holding that any of the questions which the petitioner refused to answer on his examination as a witness before the said sub-committee was pertinent to any matter within the jurisdiction

of the House of Representatives which was at the time before it for consideration or proper for its examination or to any fact bearing thereon.

(15) In holding that the said indictment charged a crime or offense against the laws of the United States.

(16) In holding that the evidence given before the said Commissioner and upon which he issued the said commitment showed probable cause to believe that the petitioner had been guilty of any such crime or offense.

(17) In holding that the Congress of the United States has power under the Constitution and Laws of the United States, to constitute the matters and things specified in the said indictment a crime or offense against the United States.

451 (18) In holding that the petitioner's refusal to answer the questions propounded to him during his examination and testimony as a witness before the said sub-committee, as set forth in the said indictment, in manner and form as therein alleged, constituted a crime or offense under any law of the United States.

(19) In construing section 102 of the Revised Statutes as applicable to an inquiry by a sub-committee of a Committee of the House of Representatives solely in aid of the legislative function.

(20) In holding that the last mentioned section as so construed was a valid and constitutional enactment.

(21) In holding that the last mentioned section was intended to or does make the acts specified in the indictment herein a crime or offense against the United States.

(22) In construing section 1014 of the Revised Statutes as authority for the petitioner's removal to the District of Columbia upon the facts disclosed in the said petition.

Wherefore the petitioner prays that the order discharging the said writ of habeas corpus and remanding the petitioner to the custody of the said William Henkel, Marshal as aforesaid, be reversed and that the petitioner be discharged from custody.

G. G. HENRY, *Petitioner*.

Cravath & Henderson, Attorneys for Petitioner, 52 William Street, Borough of Manhattan, City of New York.

452 [Endorsed:] United States District Court Southern District of New York. George G. Henry, Appellant, against William Henkel, Marshal for the Southern District of New York. In the Matter of The Petition of George G. Henry for a Writ of Habeas Corpus. Assignment of Errors. Cravath & Henderson, Attorneys for Petitioner, 52 William Street, Borough of Manhattan New York City. U. S. District Court. Filed May 28, 1913, S. D. of N. Y.

453

In the Supreme Court of the United States.

GEORGE G. HENRY, Appellant,  
against

WILLIAM HENKEL, Marshal for the Southern District of New York.

In the Matter of the Petition of GEORGE G. HENRY for a Writ of Habeas Corpus.

UNITED STATES OF AMERICA, ss.:

The President of the United States to the above named William Henkel, United States Marshal for the Southern District of New York:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be holden in the City of Washington in the District of Columbia, on the 23rd day of June, 1913, pursuant to the appeal duly allowed by the United States District Court for the Southern District of New York, and filed in the office of the Clerk of said Court on the 28th day of May, 1913, wherein the above named George G. Henry is appellant and you are appellee, to show cause, if any there be, why the final order of the said District Court rendered against the said George G. Henry as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable George C. Holt, District Judge of  
454 the United States for the Southern District of New York,  
this 28th day of May, 1913.

JULIUS M. MAYER,  
*United States District Judge.*

455 [Endorsed:] Supreme Court of the United States. George G. Henry, Appellant, against William Henkel, Marshal for the Southern District of New York. In the Matter of the Petition of George G. Henry for a Writ of Habeas Corpus. Citation. U. S. District Court, S. D. of N. Y. Filed May 28, 1913. Cravath & Henderson, Attorneys for Petitioner, No. 52 William Street, Borough of Manhattan, New York City. Due and timely service of a copy of the within — is hereby admitted. Dated, New York, May 28, 1913. H. Snowden Marshal, U. S. Attorney, Att'y for William Henkel, U. S. Marshal.

456 United States District Court, Southern District of New York.

GEORGE G. HENRY

against

WILLIAM HENKEL, United States Marshal, &c.

In the Matter of the Application of GEORGE G. HENRY for a Writ of Habeas Corpus.

To the Clerk of the United States District Court for the Southern District of New York:

You will please prepare the transcript of the record in this cause, to be filed in the office of the Clerk of the Supreme Court of the United States, under the appeal heretofore perfected to said Court, and include in said transcript the following papers and portions of the record;

(1) Petition of petitioner appellant for Writ of Habeas Corpus, with Exhibits A, B, C, D, E, F and G.

(2) Writ of Habeas Corpus.

(3) Motion of the United States Attorney for warrant of removal.

(4) Motion of the United States Attorney to quash the writ of habeas corpus.

(5) Return of United States Marshal to the Writ of Habeas Corpus.

457 (6) Traverse of return.

(7) Order discharging Writ of Habeas Corpus and remanding petitioner appellant to the custody of the Marshal.

(8) Opinion of the Court.

(9) Petition of petitioner appellant for appeal from said order to the Supreme Court of the United States; order allowing said appeal and fixing bail.

(10) Assignment of errors.

(11) Citation.

(12) And this præcipe, with acceptance and stipulation annexed.

Said transcript, which eliminates all papers not necessary to the consideration of the questions to be reviewed, to be prepared as required by law and the rules of this Court and the rules of the Supreme Court of the United States, and to be filed in the office of the Clerk of the said Supreme Court at Washington, D. C. on or before July 15, 1913.

CRAVATH & HENDERSON,

*Attorneys for George C. Henry, Petitioner-Appellant.*

Office & Post Office Address, No. 52 William Street, Borough of Manhattan, City of New York.

Due and timely service of the above præcipe, and of a copy thereof, is hereby admitted; and it is stipulated that all papers not designated in the above schedule shall be eliminated from the tran-

script to be prepared on appeal, and that the above designation includes all papers and portions of the record necessary to the consideration of the questions to be reviewed.

Dated New York, July 8th, 1913.

H. SNOWDEN MARSHALL,

*United States Attorney, Southern District of  
New York, Attorney for William Henkel,  
Appellee.*

458 [Endorsed:] United States District Court, Southern District of New York. George G. Henry, against William Henkel, United States Marshal, &c. In the Matter of the Application of George G. Henry for a Writ of Habeas Corpus. Praeipe. Cravath & Henderson, Attorneys for Petitioner-App't. No. 52 William Street, Borough of Manhattan, New York City.

459 United States District Court, Southern District of New York.

GEORGE G. HENRY

against

WILLIAM HENKEL, United States Marshal, etc.

In the Matter of the Application of GEORGE G. HENRY for a Writ of Habeas Corpus.

It is hereby stipulated by and between the attorneys for the respective parties hereto that the foregoing printed copy is a true transcript of the record in the above entitled matter as agreed on by the parties thereto.

Dated, New York, July 8, 1913.

CRAVATH & HENDERSON,

*Attorneys for Petitioner-Appellant.*

H. SNOWDEN MARSHALL,

*U. S. Attorney for the Southern District of New  
York, Attorney for William Henkel, Appellee.*

460 UNITED STATES OF AMERICA,  
*Southern District of New York, ss:*

GEORGE G. HENRY

VS.

WILLIAM HENKEL, United States Marshal, etc.

I, Alexander Gilchrist, Jr., Clerk of the District Court of the United States of America for the Southern District of New York, do hereby Certify that the foregoing is a correct transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

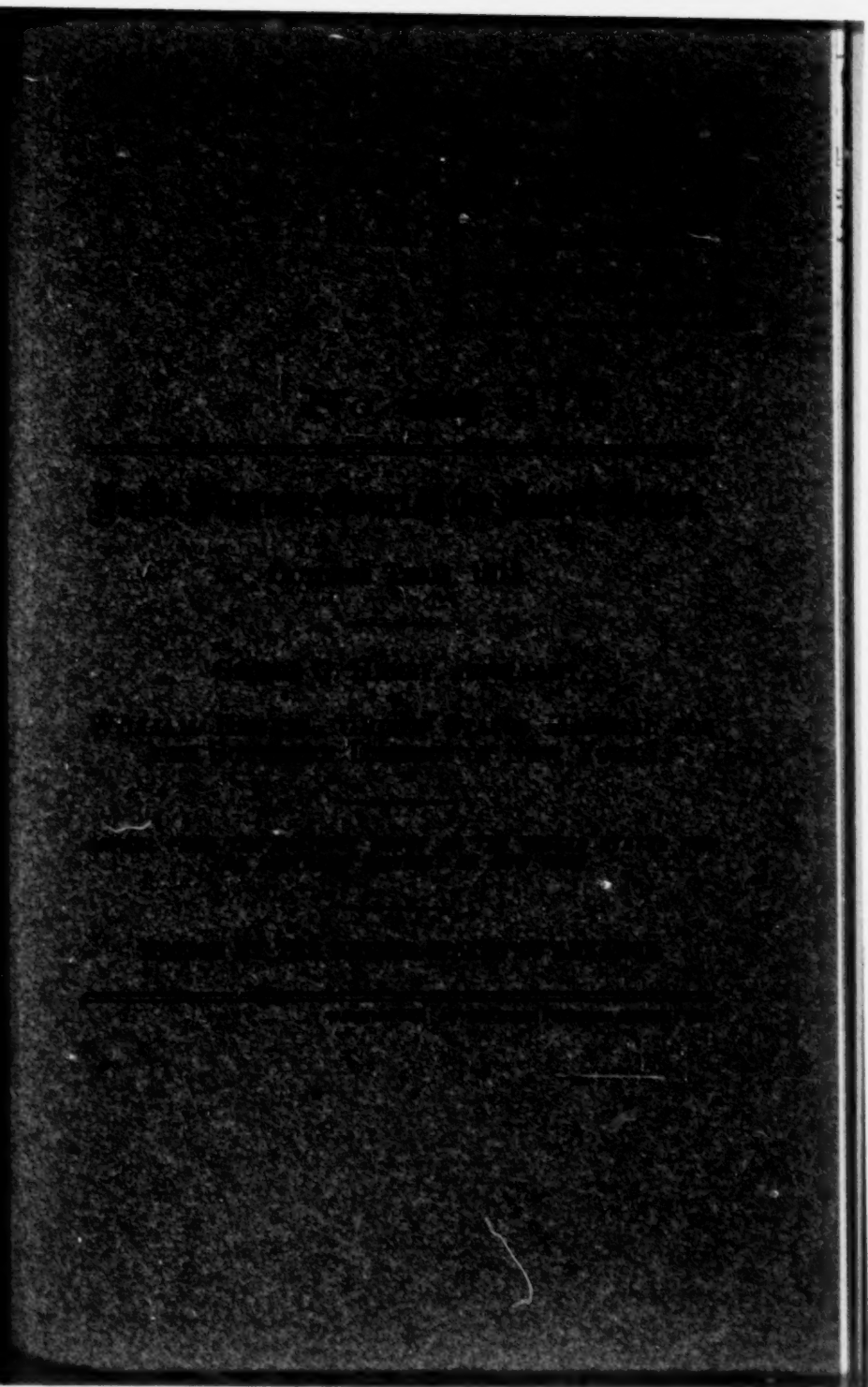
In Testimony Whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern

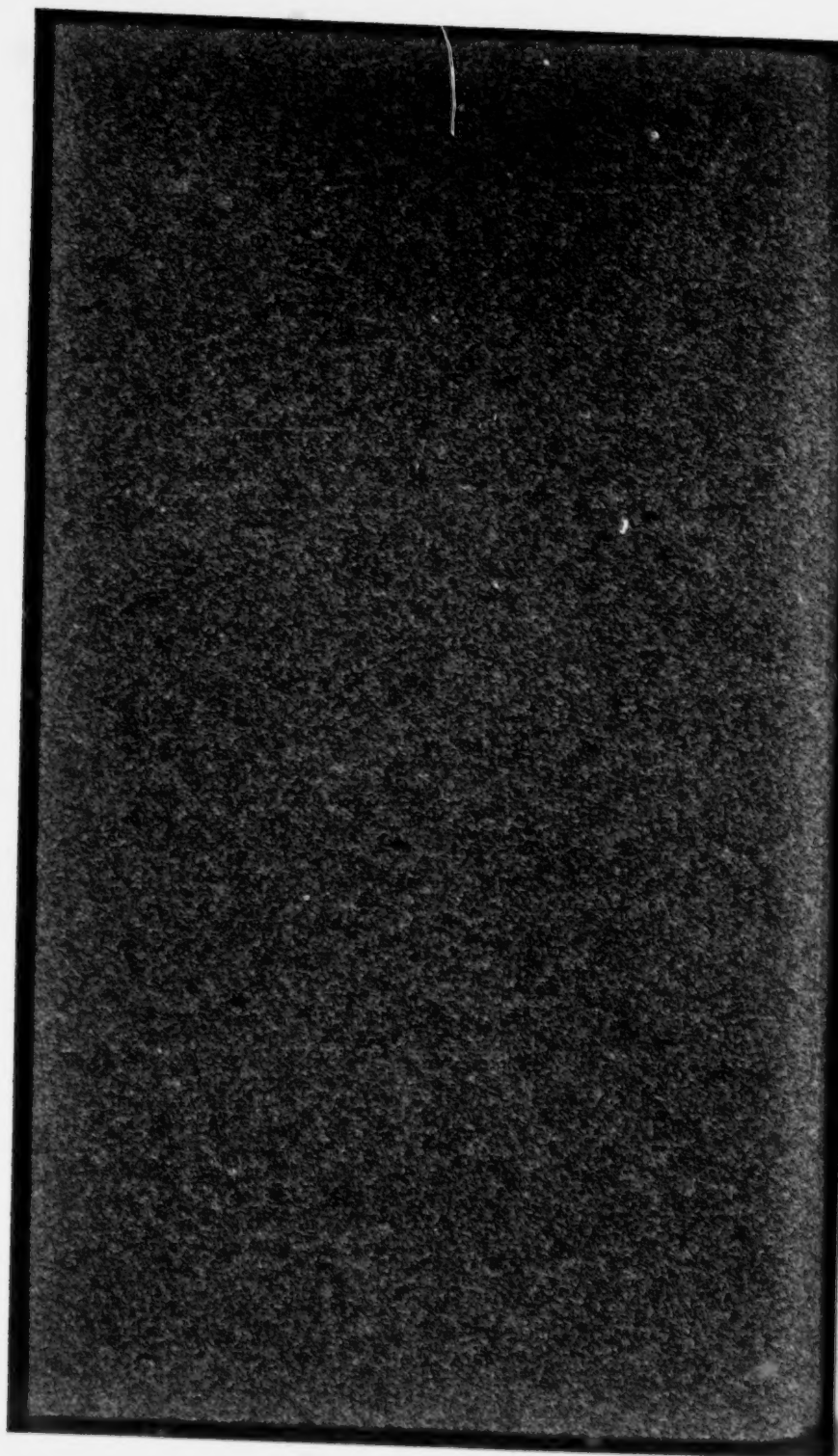
District of New York, this 8th day of July in the year of our Lord one thousand nine hundred and thirteen and of the Independence of the said United States the one hundred and thirty-eighth.

[Seal District Court of the United States, Southern District  
of N. Y.]

ALEX. GILCHRIST, JR., *Clerk.*

Endorsed on cover: File No. 23,790. S. New York D. C. U. S. Term No. 639. George G. Henry, appellant, vs. William Henkel, United States marshal for the southern district of New York. Filed July 11th, 1913. File No. 23,790.





# In the Supreme Court of the United States.

OCTOBER TERM, 1913.

---

GEORGE G. HENRY, APPELLANT,	} No. 639.
v.	
WILLIAM HENKEL, UNITED STATES MAR- shal for the Southern District of New York.	

---

*APPEAL FROM THE DISTRICT COURT OF THE UNITED  
STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.*

---

## **MOTION BY THE UNITED STATES TO ADVANCE.**

The Solicitor General, on behalf of the appellee, respectfully moves the court to advance the above-entitled cause for argument.

This is an appeal from an order of the District Court discharging a writ of habeas corpus.

Appellant was indicted in the Supreme Court of the District of Columbia for violating sections 102, 103, and 104 of the Revised Statutes, by refusing to answer questions put to him as a witness before the subcommittee of the Committee on Banking and Currency of the House, appointed under H. Res. 429, 62d Cong., 2d session (amended by H. Res.

504), to conduct the so-called "Money Trust Investigation."

Appellant was a partner of the New York banking firm of William Salomon and Company, and was being questioned in regard to a certain syndicate transaction of the California Petroleum Company in which that firm took part. He was asked "the name of national banks and officers of national banks who participated" in that operation and declined to answer. He had already testified, however, that no national banks were participants. He was also asked to state the name of the fourth partner in the syndicate known as the "Banking Group," an inner circle in this same syndicate transaction, and refused. He had previously testified that this fourth partner was a New York banking firm.

The usual removal proceedings were had under R. S., sec. 1014, and appellant was brought before the United States Commissioner in the Southern District of New York. Upon the examination, appellant moved a dismissal on the ground that the indictment stated no offense against the laws of the United States. The commissioner, overruling this motion, committed appellant to the custody of the marshal.

The petition attacked the jurisdiction of the commissioner on the grounds, *inter alia*, that House Resolution 504 was unconstitutional as an encroachment upon the constitutional powers of the judicial branch of the Government; that the questions peti-

tioner refused to answer related to the private and personal affairs of the petitioner and his firm, and were therefore matters into which neither the House nor the committee had power under the Constitution to inquire in aid of the legislative function; that if R. S., secs. 102, 103, and 104, covered the acts charged in the indictment, they were unconstitutional and void.

The District Court in its opinion passed only on the power of the subcommittee to ask the question relating to officers of national banks, and held that question to be within the constitutional powers of the subcommittee, and hence that the indictment showed probable cause for removal.

The case, therefore, presents the important constitutional questions of the validity of R. S., secs. 102, 103, and 104, and of the House Resolutions above mentioned.

Notice of this motion has been given opposing counsel.

JOHN W. DAVIS,  
*Solicitor General.*

DECEMBER, 1913.

O



U. S. DISTRICT COURT, S. D. N. Y.

FILED

FEB 2 1914

JAMES D. MAHE

CLERK

# Supreme Court of the United States.

OCTOBER TERM, 1913.

No. ~~62~~ 216

GEORGE G. HENRY,  
*Appellant,*

*vs.*

WILLIAM HENKEL, United States Marshal for the Southern  
District of New York,  
*Appellee.*

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE  
SOUTHERN DISTRICT OF NEW YORK.

## BRIEF FOR THE APPELLANT.

JOHN C. SPOONER,  
PAUL D. CRAVATH,  
JOHN D. LINDSAY,  
STUART McNAMARA,  
*Of Counsel for Appellant.*

## INDEX.

	PAGE
Statement .....	1
The statute :	
Act of Jan. 24, 1857 .....	1
Amendment of 1862 .....	2
As carried into the Revised Statutes .....	3
The Removal proceeding .....	4
1. The indictment .....	4
House Resolution No. 504 .....	5
Matters adduced by the Committee before the appellant's examination .....	8
The information which he voluntarily gave .....	9
The questions which he refused to answer .....	13
2. The Government's evidence .....	14
3. The defendant's evidence .....	14
The Habeas Corpus proceeding .....	19
The grounds upon which the petitioner asserted the illegality of his imprisonment .....	19
Decision of the District Judge .....	21
Errors relied upon .....	22
Petitioner not a wilfully recalcitrant witness .....	24
Argument .....	25
FIRST. Even though the language of the statute were sus- ceptible of a construction broad enough to cover the case at bar, it should not be so construed because such a construction was not within the intention of Congress. ....	27
(a) Such a construction would be repugnant to the representative character of the American govern- ment .....	27
(b) That there was an intention on the part of Con- gress that the Act should not apply to inquiries in aid of legislation is implied in the title .....	30
(c) This is made plain by a consideration of the Act as a whole .....	31
(i) The act contains no provision for the judicial determination of the pertinency or relevancy of questions, which is usual in statutes author- izing inquiries in aid of legislation, before pro-	

ceeding to imprison the witness for his refusal to answer.....	31
(ii) The first section refers only to those matters in respect of which Congress may competently take definitive action.....	32
(iii) The presence of the word "pertinent" is inconsistent with any other view.....	34
(iv) The second or immunity clause demonstrates the purpose of so limiting the operation of the Act.....	34
(v) This intent is confirmed by the language of the third section.....	35
(d) The situation as it existed at the time the Act was passed and as it was pressed upon the attention of Congress.....	36
The Simonton Case.....	37
Report of the Select Committee and introduction of the Bill.....	39
History of the period as shown by the debates..	40
(e) This, the first occasion on which an attempt has been made to have the statute construed as applying to inquiries in aid of legislation.....	46
Case of John W. Wolcott (1858).....	47
"    Hallet Kilbourn (1876).....	49
"    Elverton R. Chapman (1894).....	50
SECOND. If the statute is to be so construed as to make it applicable to inquiries in aid of legislation it is unconstitutional.....	51
Any forcible intrusion into and compulsory exposure of the private affairs of the individual except when the general good requires it, is violative of the 4th and 5th amendments.....	53
The power to invade the right of privacy can be justified only on the ground of necessity.....	54
(a) Such a power is not necessary for the exercise by Congress of its function of legislation.....	55
The question raised but not decided in <i>Kilbourn v. Thompson</i> .....	58
It was expressly decided in the negative by the Privy Council in <i>Kielley v. Carson</i> , a decision which the court has treated with high respect.....	58

	PAGE
Other English cases .....	62
Pacific Railway Commission case.....	67
Brimson case .....	74
Harriman case .....	76
Chapman case .....	78
(b) The decisions holding that state legislatures possess the power.....	79
(c) Congress has not always thought it had the power .....	80
(d) The practice of recent years is no evidence of the constitutionality of the practice.....	85
THIRD. The questions which the appellant refused to answer were not "pertinent to the question under inquiry" .....	87
(a) The information which they sought to elicit was not necessary or material.....	89
Barnes case .....	91
(b) If the committee had known the names of the national bank officers which the appellant refused to disclose, they would not have been able to examine, through such officers, or otherwise, into the transactions or affairs of the banks themselves. 100	

### List of Cases.

Barnes, Matter of, 204 N. Y., 108.....	91
Boyd v. United States, 116 U. S., 616.....	52, 86
Briggs v. Mackellar, 2 Abb. Pr. (N. Y.) 30.....	99
Burnham v. Morrissey, 14 Gray, 226.....	79, 98
Chapman case, Smith's Digest,* 583.....	50
Chapman, <i>In re</i> , 166 U. S., 661.....	33, 45, 78
Cooper's Case, 32 Vermont, 253.....	53
Davies, Matter of, 168 N. Y., 89.....	52
Doyle v. Falconer, L. R., 1 P. C., 328 .....	65
Falvey, <i>In re</i> , 7 Wis., 630.....	79, 98
Fenton v. Hampton, 11 Moore, P. C. 347.....	62
Guthrie v. Harkness, 199 U. S., 148.....	102
Harriman v. Interstate Commerce Commission, 211 U. S., 407 .....	25, 76
Heike v. United States, 227 U. S., 131 .....	34

IV

	PAGE
Interstate Commerce Commission v. Brimson, 154 U. S. 447.....	52, 54, 74
Kielly v. Carson, 4 Moore, P. C., 63.....	58, 80
Kilbourn case, Smith's Digest,* 536 .....	49
Kilbourn v. Thompson, 103 U. S., 168 .....	50, 55, 101
Loan Association v. Topeka, 20 Wall, 655.....	52
McLean v. United States, 226 U. S., 374.....	39
Muskrat v. United States, 219 U. S., 346 .....	51
Northern Pacific Co. v. Washington, 222 U. S., 370.....	39
Oceanic Steam Navigation Co. vs. Stranahan, 214 U. S., 320 .....	39
Omaha Street Railway v. Interstate Commerce Commission, 230 U. S., 324.....	40
Pacific Railway Commission, <i>in re</i> , 32 Fed. Rep. 241. 34, 53, 67	
People <i>ex rel.</i> McDonald v. Keeler, 99 N. Y., 463.....	79
Robinson, <i>ex parte</i> , 19 Wall., 505.....	53
Robinson v. Phil. & R. R. Co., 28 Fed. Rep., 340.....	54
Simonton case, Smith's Digest,* 85.....	37
Slaughter House Cases, 16 Wall., 36.....	52
Standard Oil Co. v. United States, 221 U. S., 1.....	40
Stockdale v. Hansard, 9 Ad. & E., 1.....	85
United States v. Press Publishing Co., 219 U. S., 1.....	36
United States v. Trans-Missouri Freight Assn. 166 U. S., 290 .....	40
Wertheim v. Continental R. & T. Co., 15 Fed. Rep., 716..	53
Wolcott case, Smith's Digest,* 201 .....	47

---

\* Digest of Decisions and Precedents; Senate Misc. Doc. No. 278; 53rd Cong., 2nd Sess.

# Supreme Court of the United States.

OCTOBER TERM, 1913.

No. 639.

---

GEORGE G. HENRY, Appellant,

vs.

WILLIAM HENKEL, United States Marshal for the Southern  
District of New York.

---

## BRIEF FOR THE APPELLANT.

Appeal from an order of the District Court for the Southern District of New York, entered May 28th, 1913, discharging a writ of *habeas corpus* sued out by the appellant to determine the legality of his detention under a commitment issued by JOHN A. SHIELDS, ESQUIRE, United States Commissioner, whereby the appellant was committed to the custody of the appellee pending the issuance by the District Judge of a warrant for his removal to the District of Columbia for trial on an indictment which had been returned by the Grand Jury of that District, February 10, 1913, charging the appellant with an alleged violation of Sections 102-4 of the Revised Statutes (Record, pp. 337-8).

### THE STATUTE WHICH THE APPELLANT IS ACCUSED OF HAVING VIOLATED.

The forerunner of Section 102 of the Revised Statutes was the Act of January 24, 1857, entitled, "An Act more effectually to enforce the attendance of witnesses on the summons of either House of Congress, and to compel them to discover testimony" (11 Stat., 155, c. 19), which read as follows :

" 1. That any person summoned as a witness by the authority of either House of Congress to give testimony or to

produce papers upon any matter before either House, or any committee of either House of Congress, who shall wilfully make default, or who, appearing, shall refuse to answer any question pertinent to the matter of inquiry in consideration before the House or committee by which he shall be examined, shall in addition to the pains and penalties now existing, be liable to indictment as and for a misdemeanor, in any Court of the United States having jurisdiction thereof, and on conviction, shall pay a fine not exceeding one thousand dollars and not less than one hundred dollars, and suffer imprisonment in the common jail not less than one month nor more than twelve months.

"SEC. 2. That (*sic*) no person examined and testifying before either House of Congress, or any committee of either House, shall be held to answer criminally in any court of justice, or subject to any penalty or forfeiture for any fact or act touching which he shall be required to testify before either House of Congress or any committee of either House as to which he shall have testified *whether before or after the date of this act*, and that no statement made or paper produced by any witness before either House of Congress or before any Committee of either House, shall be competent testimony in any criminal proceeding against such witness in any court of justice; and no witness shall hereafter be allowed to refuse to testify to any fact or to produce any paper touching which he shall be examined by either House of Congress, or any committee of either House, for the reason that his testimony touching such fact or the production of such paper may tend to disgrace him or otherwise render him infamous: *Provided*, That nothing in this act shall be construed to exempt any witness from prosecution and punishment for perjury committed by him in testifying as aforesaid.

"SEC. 3. That when a witness shall fail to testify, as provided in the previous sections of this act, and the facts shall be reported to the House, it shall be the duty of the Speaker of the House or the President of the Senate to certify the fact under the seal of the House or Senate to the district attorney for the District of Columbia, whose duty it shall be to bring the matter before the grand jury for their action."

In 1862 (12 Stat., 333), the immunity provision of the Act of 1857 was repealed by an amendment making Section 2 read as follows:

"That the testimony of a witness examined and testifying before either House of Congress, or any committee of either House of Congress, shall not be used as evidence in any criminal proceeding against such witness in any court of justice: *Provided, however*, That no official paper or record,

produced by such witness on such examination, shall be held or taken to be included within the privilege of said evidence so to protect such witness from any criminal proceeding as aforesaid; and no witness shall hereafter be allowed to refuse to testify to any fact, or to produce any paper touching which he shall be examined by either House of Congress, or any committee of either House, for the reason that his testimony touching such fact, or the production of such paper, may tend to disgrace him or otherwise render him infamous: *Provided*, That nothing in this act shall be construed to exempt any witness from prosecution and punishment for perjury committed by him in testifying as aforesaid."

When the Act of 1857, as thus amended, was carried into the Revised Statutes, it was divided into four separate sections, viz:

"SEC. 102. Every person who having been summoned as a witness by the authority of either House of Congress, to give testimony or to produce papers upon any matter under inquiry before either House, or any committee of either House of Congress, wilfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than one thousand dollars nor less than one hundred dollars, and imprisonment in a common jail for not less than one month nor more than twelve months.

"SEC. 103. No witness is privileged to refuse to testify to any fact, or to produce any paper, respecting which he shall be examined by either House of Congress, or by any committee of either House, upon the ground that his testimony to such fact or his production of such paper may tend to disgrace him or otherwise render him infamous.

"SEC. 104. Whenever a witness summoned as mentioned in section one hundred and two fails to testify, and the facts are reported to either House, the President of the Senate or the Speaker of the House, as the case may be, shall certify the fact under the seal of the Senate or House to the district attorney for the District of Columbia, whose duty it shall be to bring the matter before the grand jury for their action.

"SEC. 859. No testimony given by a witness before either House, or before any committee of either House of Congress, shall be used as evidence in any criminal proceeding against him in any court, except in a prosecution for perjury committed in giving such testimony. But an official paper or record produced by him is not within the said privilege."

## THE REMOVAL PROCEEDING.

The proceeding which resulted in the Appellant's commitment was instituted under Section 1014 of the Revised Statutes which is as follows :

" For any crime or offense against the United States, the offender may, by any justice or judge of the United States, or by any commissioner of a circuit court to take bail, or by any chancellor, judge of a supreme or superior court, chief or first judge of common pleas, mayor of a city, justice of the peace, or other magistrate, of any State where he may be found, and agreeably to the usual mode of process against offenders in such state, and at the expense of the United States, be arrested and imprisoned or bailed, as the case may be, for trial before such court of the United States as by law has cognizance of the offense. Copies of the process shall be returned as speedily as may be into the clerk's office of such court, together with the recognizances of the witnesses for their appearance to testify in the case. And where any offender or witness is committed in any district other than that where the offense is to be tried, it shall be the duty of the judge of the district where such offender or witness is imprisoned, seasonably to issue, and of the marshal to execute, a warrant for his removal to the district where the trial is to be had."

The complaint charged, on information and belief, that the appellant, on January 7, 1913, having appeared as a witness before a sub-committee of the Committee on Banking and Currency of the House of Representatives, refused to answer certain questions propounded to him by the counsel to the sub-committee which were pertinent to the investigation then being conducted by the Committee. Annexed to the complaint was an exemplified copy of the indictment which had been returned against the appellant in the District of Columbia, also the bench warrant issued thereon (Record, pp. 6-9).

### 1. THE INDICTMENT.

The allegations of the indictment may be conveniently divided into four parts, viz. :

(a) The resolution under which the sub-committee conducted its inquiry.

(b) The matters which had been adduced prior to appellant's appearance before the sub-committee.

- (c) The information which the appellant voluntarily gave.
- (d) The questions which he refused to answer.

(a) *The resolution under which the sub-committee conducted its inquiry.*

The investigation was directed by a resolution of the House, adopted April 25, 1912, (H. R. No. 504), which is set forth at length in the indictment. In brief, it attempted to authorize an inquiry into the New York Stock Exchange, the Clearing House, life insurance companies, the fiscal and banking affairs of interstate corporations, campaign contributions, the activities of a few "groups of financiers" in New York and elsewhere, national banks, and many other subjects, "as a basis for remedial and other legislative purposes" (*Id.*, pp. 10-16).

After reciting that it had been ascertained that a prior resolution (H. Res., 429) was "insufficient in the delegation of its powers to permit of the scope of inquiry which is believed to be necessary as a basis for remedial legislation on the subjects covered by this resolution," and after referring to pending currency and banking legislation and bills to amend and supplement the anti-trust law, and to regulate corporations engaged in interstate commerce (pp. 11, 12), the resolution further recited :

(a) That "it has been charged, and there is reason to believe, that the management of the finances of many of the great industrial and railroad corporations of the country engaged in interstate commerce is rapidly concentrating in the hands of a few groups of financiers in the City of New York, and their associates in New York and other cities, and that these groups, by reason of their control over the funds of such corporations and the power to dictate the depositories of such funds, and by reason of their relations with the great life insurance companies with headquarters in New York City, and by other means, have secured domination over many of the leading national banks and other moneyed institutions and life insurance companies in the City of New York and other cities to which they direct such patronage and over the vast deposits of money and of the other assets of such institutions, thus enabling them and their associates to direct the operations of the latter in the use of the money belonging to their depositors and the stockholders and in the purchase and sale of securities and loans of money by such banks and other

moneyed institutions and life insurance companies, and that these institutions and their funds are being used to further the enterprise and increase the profits of these groups of individuals from such transactions and to augment their power over the finances of the country, and to control the money, exchange, security, and commodity markets, and prevent competition in the enterprises in which they are interested to the detriment of interstate commerce and of the general public " (p. 12).

(b) That "it has been further charged and is generally believed that these same groups of financiers have so intrenched themselves in the control of the aforesaid financial and other institutions, and otherwise in the direction of the finances of the country that they are thereby enabled to use the funds and property of the great national banks and other moneyed corporations in the leading money centres to control the security and commodity markets; to regulate the interest rates for money; to create, avert and compose panics; to dominate the New York Stock Exchange and the various clearing house associations throughout the country, and through such associations and by reason of their aforesaid control over the aforesaid railroads, industrial corporations and moneyed institutions, and others, and in other ways resulting therefrom, have wielded a power over the business, commerce, credits and finances of the country that is despotic and perilous and is daily becoming more perilous to the public welfare" (*Id.*).

(c) That "the national banks and other moneyed institutions controlled as aforesaid are charged to have been, and to be, engaged in the promotion, underwriting and exploitation of speculative enterprises, and in the purchase and sale of securities of such enterprises, and in acquiring, directly or indirectly, stocks of other banking institutions and absorbing competitors and in using their corporate funds and credit for such purposes, either alone or in conjunction with those by whom they are controlled (pp. 12-13), and

(d) That "it is deemed advisable to gather the facts bearing on the aforesaid conditions and charges as a basis for remedial and other legislative purposes" (p. 13).

The resolution thereupon assumed to authorize and direct a sub-committee of eleven members of the Committee on Banking and Currency,

FIRST, to "fully investigate and inquire into each and all of the above recited matters and into all matters, and subjects connected with, or appurtenant to, or bearing upon the same" (*Id.*).

SECOND, "to fully inquire into and investigate, among other things, whether and to what extent" certain conditions which are enumerated—twelve in number—prevail, and among them, "whether and to what extent" (h) "the funds or credit of national banks \* \* \* are or have been employed: First, in the purchase of securities from bankers or others in any way interested in or connected with such corporations; second, in the guaranty or underwriting of securities or syndicate transactions \* \* \* (i) "any national bank \* \* \* has speculated or is speculating in stocks, and if so, the nature of all such transactions and the profits and all other details thereof", (j) "the management and operation of the New York Stock Exchange \* \* \* are, or may be, directly or indirectly, dominated, controlled or otherwise affected by any individuals or groups of individuals who control or are influential in directing the use or deposit of the funds of national banks in the City of New York", etc., and (k) "any individual, firm or corporation, or any one or more groups \* \* \* may or can affect the security markets of the country through the New York Stock Exchange" (pp. 13-15).

THIRD. "To investigate, find and report the facts bearing upon the payment of political contributions to national campaign funds by or in the interest of national banks and interstate railroad and industrial corporations" (p. 15); and

FOURTH. "To investigate the methods of financing the cash requirement of interstate corporations and of marketing their securities, and the relations of national banks and others to such transactions" (*Id.*).

The fifth clause authorized the committee as a whole, or by sub-committee, to sit during the sessions of the House and during the recess of Congress, to hold its meetings in such cities and places as it might from time to time designate, and furthermore, required its hearings to be "open to the public". The same clause authorized the committee to employ "counsel, experts, accountants, bookkeepers, clerical and other assistants," to summon and compel the attendance of witnesses, to "send for persons and papers" and to "administer oaths to witnesses"; and "*directed*" the Comptroller of the Currency, the Secretary of the Treasury and the Commissioner of the Bureau of Corporations, and their respective assistants and subordinates, "to comply with all directions of the committee for assistance in its labors, to place at the service of the Com-

mittee all the data and records of their respective departments, to procure for the committee, from time to time, such information as is subject to their control or inspection, and to allow the use of their assistants for the making of such investigations with respect to corporations under their respective jurisdictions as the committee, or any sub-committee, might from time to time direct (*Id.*).

The resolution concluded with a clause by which the House proffered to witnesses immunity from prosecution with respect to any matter or thing concerning which they might be interrogated and as to which they should truthfully make answer under oath upon the investigation (*Id.*, pp. 15, 16).

*(b) The matters which had been adduced prior to the appellant's appearance before the sub-committee.*

Prior to the appellant's appearance before it, the sub-Committee had, by the examination of witnesses, adduced evidence tending to prove

"that in the City of New York, State of New York, there was a certain voluntary association of individuals known as and called the New York Stock Exchange, which for many years had and still did maintain a certain building and place in said City commonly called the New York Stock Exchange, with essential facilities for the purchase and sale of the capital stock, bonds and other forms of securities, of corporations organized and doing business in the United States and foreign countries, including the great railroad, industrial, mercantile and banking corporations carrying on their business throughout the said United States, and between the several States; that before the securities of said corporations could be dealt in by purchase, sale or otherwise, on the Exchange, it was, by the rules of said "New York Stock Exchange," required that such securities be listed by said "New York Stock Exchange," that is to say, that by orders of a certain committee of said "New York Stock Exchange," to wit, the Governing Committee, to whom the authority was delegated, such securities be allowed to become the subject of purchase and sale upon and in the Exchange; that by reason of the magnitude of trading through purchase and sale of corporate securities as aforesaid on the Exchange the Exchange had become and was the leading market in the United States, as well as a great World market, for the purchase and sale of securities as aforesaid. That the quotations for the purchase and sale of such securities on the Exchange were daily disseminated,

distributed and published through and by means of the mails of the United States and by means of the telegraph and by the daily newspapers throughout the United States, and were generally accepted and adopted by interested persons, firms and corporations concerned in the ownership, the purchase and sale and otherwise in such securities, as a basis for fixing and determining the market value of such securities; that in the City of New York there were many banks, including National Banks of the United States, which made a practice of lending money and accepting as collateral security for the repayment thereof the stocks, bonds and other forms of securities so listed and dealt in on the Exchange, and that in ascertaining and determining the values of said corporate securities as such collateral for the loans so granted by them as aforesaid, the said banks and the officers thereof, exercising the authority of granting loans therefor as aforesaid, did very generally consider and accept the said quotations for the purchase and sale of corporate securities as they occurred on the Exchange, and as so disseminated, distributed and published as aforesaid, as a basis for ascertaining and deciding the market value of said corporate securities, and hence that corporate securities so listed and dealt in on the Exchange thereby became and were more available for use as such collateral security in obtaining loans from National banks and other financial institutions throughout the City of New York and elsewhere, than they would otherwise be" (*Id.*, pp. 16-17).

(c) *The information which the appellant gave the sub-committee.*

The appellant voluntarily testified to the following facts:

"That he, the said George G. Henry, was a partner in the firm of William Salomon & Company, engaged in the City of New York in the business of banking; that in the month of September, 1912, the California Petroleum Corporation was incorporated under the laws of the State of Virginia by the firm of Doheny and Canfield, for the purpose of acting as a holding company for the capital stock of two corporations carrying on the business of producing and selling oil in the State of California; that the capital stock of the California Petroleum Corporation was \$15,000,000 par value of preferred stock and \$17,500,000 par value of common stock, each share of the par value of one hundred dollars. That on, to-wit, September 16, 1912, William Salomon and Company agreed to purchase of Doheny and Canfield \$10,000,000 par value of preferred stock, and \$7,572,845 par value of the common stock of the California Petroleum Corporation for the sum of \$8,215,662. That contemporaneously with the incorporation of the California Petroleum Corporation and the agreement to

purchase stock as aforesaid, William Salomon and Company formed a syndicate composed of themselves, Lewisohn Brothers, Hallgarten and Company, bankers in New York City, and a certain other banking firm in said city (whose name witness did not disclose) for the purpose of participating in the purchase of said stock under said agreement and otherwise dealing therewith as hereafter appears (which said syndicate will hereafter be referred to as the Banking Group). That the unnamed participant in the Banking Group was granted an interest of  $12\frac{1}{2}$  per cent. therein and each of the other three participants  $29\frac{1}{8}$  per cent.; that thereupon William Salomon and Company, in behalf of the Banking Group, sold to a syndicate in London, England, \$5,000,000, par value, preferred stock, and \$2,500,000, par value, common stock, of the California Petroleum Corporation, plus accrued dividends on the preferred stock for the sum of \$5,000,000, and thereafter had no interest in the stock thus sold. That at the same time William Salomon and Company formed a syndicate (hereafter referred to as New York Syndicate) composed of one hundred and four participants, including the members of the Banking Group, to which they sold \$5,000,000 par value of the preferred stock, and \$2,500,000 par value of the common stock of the California Petroleum Corporation, plus accrued dividends on preferred stock, for the sum of \$5,000,000, and by the sales to the London and New York Syndicates, as aforesaid, a profit was realized by the Banking Group of \$1,784,338 in cash and 25,729 shares of the common stock, being the balance unsold, amounting to the par value of \$2,572,846. Among the participants in the New York Syndicate were three corporations; also certain banking firms or institutions, and as to whether these were incorporated institutions George G. Henry was uncertain, two of said banking institutions being located in New York City and the other in another city of the United States. One of the said banking institutions in New York City participated to an amount of \$500,000 of the par value of the capital stock. That there were also fifteen individuals participating who were officers of seven national banks (meaning thereby banks organized and doing business under the statutes of the said United States), four of said national banks being located in the City of New York, two in the City of Chicago, Illinois, and one in the City of Detroit, Michigan; also six individuals who were officers of four trust companies, three of which companies were located in the City of New York and one in the City of Chicago; also three individuals who were officers of banks outside of the City of New York. That the total amount of participation by officers of banks was \$535,000, the largest single participation being \$50,000 granted

to an officer of a national bank located in the City of New York. That there was also a trust company in the City of New York participating to the amount of \$50,000, *but that no National Bank participated.* The total amount of participations in the syndicate by banks and banking institutions was \$600,000 and the total number of individuals participating who were officers of said banks and institutions, including the national banks, was twenty-four. In some instances, banks as well as officers thereof participated. Altogether participations to the amount of \$1,085,000, par value, of the stock were granted to banking institutions and officers of banking institutions. That it was the usual practice of William Salomon and Company to grant participation in like transactions to banks and trust companies, including national banks in the City of New York and elsewhere throughout the United States, and it is not unusual for both the National banks and officers thereof to participate in the same syndicate. That the said George G. Henry did not want to disclose the names of the participants in the New York Syndicate although he understood it to be the wish of the Sub-committee that he should, for the reason that he would consider it dishonorable to reveal the names of his customers unless compelled to do so.

"That the members comprising the New York Syndicate were offered participation by William Salomon and Company by letter, but before acceptances had been received from all of those to whom such participation had been offered, all the stock, to-wit, \$5,000,000 par value, preferred, and \$2,500,000, par value, of common, were sold by William Salomon and Company in behalf of the New York Syndicate at a profit of nearly \$500,000, which sale was completed on the same day that the stock was allotted and sold to the New York Syndicate. Through the sale of the New York Syndicate stock aforesaid, the members of the syndicate, who were officers of banks and to whom participation has been allotted and in some cases before they had accepted the allotment and legally committed themselves, realized a profit from the transaction of about \$50,000 and thereby, in effect, received a present of their proportionate share of the profits as aforesaid. That practically all the stock of the New York Syndicate was sold before any acceptance to participate therein had been received by William Salomon & Company, but that the profits realized were nevertheless distributed among those to whom participation had been offered as aforesaid. That the New York Syndicate participants never paid anything for or on account of their participation and never had possession of any of the stock certificates, but the same were held by William Salomon & Company as the syndicate managers, and on the same day said stock

was by them set over to the New York Syndicate, to-wit, October 2, 1912, the transactions were entered on the books of William Salomon & Company by debiting the full amount of stock to the syndicate account and crediting the syndicate account with the various sales, whereupon the stock was delivered to the purchasers, who were customers of William Salomon & Company, and that some of said customers were participants in the New York Syndicate, but none of the bank officers who were participants in the New York Syndicate purchased any of Syndicate stock. They only took their profits from the New York Syndicate, though they had never contributed any money to the New York Syndicate and were not legally committed as participants therein.

"That after the sale of the New York Syndicate stock as aforesaid, and on, to-wit, October 5, 1912, William Salomon & Company\* procured the listing of the stock of the California Petroleum Corporation on the New York Stock Exchange; that after the said stock was so listed and until the present (to-wit, January 7, 1913) Lewisohn Brothers conducted on the Exchange a market operation by the purchase and sale of said stock for and on account of the Banking Group (William Salomon & Company, Lewisohn Brothers, Hallgarten & Company and the undisclosed firm who had been granted a participation of 12½ per cent). The aforesaid market operation by Lewisohn Brothers on the Exchange was conducted for the purpose of making a market for the stock of the California Petroleum Corporation by creating a ready demand among the public for the purchase and sale of said stock. For this purpose, Lewisohn Brothers daily engaged on the Exchange in buying and selling the stock, which was done each day by the placing of orders with various brokers (members of the New York Stock Exchange operating on the Exchange), for purchase of the stock at certain prices and for the sale of the stock at certain prices, each of said brokers acting under such orders and so purchasing and selling the stock as aforesaid, being unaware that the other brokers so purchasing and selling the stock were likewise acting by the orders of Lewisohn Brothers as aforesaid. That in the market operation aforesaid, the Banking Group lost money, but this they expected to do in accomplishing their purpose of making

---

\* This is not borne out by the testimony before the sub-committee. There the appellant testified that the application for listing was prepared by the vice-president and the treasurer of the company in conjunction with the statistician of our office, whose help was engaged because he knew the machinery to go through and they did not" (p. 54; see, also, p. 64).

a market for the stock. That although the stock of the New York Syndicate was sold by William Salomon & Company as aforesaid at \$40 per share, and the stock of the Banking Group had been sold in part at \$40 and in part at \$45 per share, the market operations aforesaid on the Exchange were carried on at prices ranging between \$62.50 and \$70 per share, and rose as high as \$72 per share, shortly after operations began on the Exchange in the month of October. During the period the market operations aforesaid, the public (meaning thereby those not concerned in the organization of the California Petroleum Corporation or in the flotation of its stock as hereinbefore set forth) became purchasers of the stock on the Exchange at prices ranging between \$50 and \$70 per share and that the stock is now, to-wit, January 7, 1913, selling at about \$50 per share. That the natural market of the stock of the California Petroleum Corporation would not have been the same without the market operations carried on by Lewisohn Brothers for the Banking Group as aforesaid, but by reason thereof the stock attained a much better and wider market than it would have had without the market operation aforesaid and that there are now (January 7, 1913) nearly two thousand registered stockholders of the California Petroleum Corporation" (*Id.*, pp. 17-21).

(d) *The questions which the appellant refused to answer.*

The appellant refused to answer certain questions whereby counsel for the Committee sought to elicit (1) the names of the

---

(\*) It thus appeared by the appellant's testimony that while there *were no banks at all in the syndicate* (Record, p. 44), it did include the following institutions and individuals participating in amounts as stated :

3 banking institutions ( <i>i. e.</i> , not banks, but institutions).....	\$600,000.	(Record, 44, 45)
viz.		
2 in New York ) 1.....	\$500,000.	\$500,000.
1 outside of ) 1.....	50,000	" "
New York )	50,000	
24 officers of banks & trust Companies.....	\$535,000.	" "
15 officers of 7 national banks, Viz. :		
4 in New York.		" "
2 in Chicago.		
1 in Detroit.		
6 officers of trust companies.		
3 in New York.		" "
1 in Chicago.		
3 officers of State banks outside New York		" "

officers of national banks\* who participated in the syndicate operation of the California Petroleum Company, and (2) the name of the fourth partner in the Banking Group, namely, the New York banking firm which he had testified had a 12½ per cent. interest in that syndicate (*Id.*, pp. 21-23).

## 2. EVIDENCE FOR THE GOVERNMENT.

When brought before the Commissioner the appellant demanded an examination. Before the introduction of any evidence, he moved for a dismissal of the complaint and for his discharge "on the ground that the said Commissioner was without jurisdiction to proceed in the premises, it appearing on the face of the complaint that your petitioner was not thereby charged with any crime or offense against the United States" (Record, p. 2).

This motion having been denied, the Government put the indictment and bench warrant in evidence, and rested, the appellant's identity being conceded.

Counsel for the appellant thereupon again moved for a dismissal of the complaint, and for the appellant's discharge, on the grounds above stated, and upon the further ground that the evidence introduced by the Government had failed to show any offense against the laws of the United States (*Id.*).

## 3. THE DEFENDANT'S EVIDENCE.

This motion having been denied, counsel for the appellant introduced in evidence a transcript of the appellant's entire testimony before the committee, and the majority and minority reports of the committee (*Id.*).

From the former it appears that when asked the reason of his refusal to give the name of the fourth member of the Banking Group, he replied: "Because we told them, at the time, that their names would not appear publicly in the transaction. It is a matter of more or less common knowledge, I think, as to who the house was, but their name was not to appear publicly, and I do not feel at liberty to disclose it" (p. 41).

---

\* Mr. Henry had already testified that no national banks were in the syndicate (Record, p. 44).

When asked why, if there was nothing dishonorable or improper in national bank officers participating in the syndicate, he hesitated to state their names, the appellant responded: "Because the relations between the banker and his client, while they are not, perhaps, privileged relations, such as those that exist between a lawyer and his client, or the doctor and his patient, are nevertheless confidential, and it is recognized by all honorable and decent business men that they should not tell the names of their customers unless compelled to do so" (*Id.*, p. 49):

Subsequently the following took place:

"MR. UNTERMYER: The Committee desires to know the names of national banks and officers of national banks who participated in this syndicate operation of the California Petroleum Company?"

"MR. HENRY: Mr. Untermyer, I very greatly regret that I do not feel at liberty to give the Committee that information.

"MR. UNTERMYER: You decline to do so?"

"MR. HENRY: Yes, sir; I respectfully decline to do so.

"THE CHAIRMAN: I will state as Chairman of the Committee that it becomes my duty to inform you, Mr. Henry, that your declination to answer this question, which the committee considers within its jurisdiction under the resolution referring this inquiry to it, will be reported to the General Committee as a contempt of authority of the House for such action as the entire Committee and the House may see fit to take in the premises if you persist in your declination.

"MR. HENRY: Yes, sir, I realize that, Mr. Chairman.

"THE CHAIRMAN: The Committee does not feel that it is asking any question that it has not the right to ask. It has considered the memorandum in your behalf that has been submitted to it, and feels that it is its duty to propound this question, particularly with relation to national banking institutions and officers taking part in this operation involving securities of corporations doing business between the states.

"MR. HENRY: I understand.

"MR. UNTERMYER: Do you also decline to state the name of the fourth partner in your syndicate?"

"MR. HENRY: Yes.

"MR. UNTERMYER: (continuing) Who had an interest of 12½ per cent.?"

"MR. HENRY: Yes, I do, Mr. Untermyer (*Id.*, pp. 63-4).

He was advised by counsel that there was no legal compulsion to answer the questions and he acted on such advice,

reading to the committee the following paper which had been prepared by his counsel :

"I declined to answer the question\* upon the advice of counsel that the committee is without jurisdiction to require the information called for, upon the grounds :

"1. That the subject matter is one in respect to which the Congress is without power to legislate.

"2. That the question is an unlawful intrusion into the private affairs of a citizen under the fourth and fifth amendments of the constitution of the United States.

"3. Generally, that the committee is not lawfully entitled to compel the information called for" (p. 67).

On this the following colloquy ensued (Record, pp. 67-8) :

"MR. UNTERMYER: It is your idea, Mr. Henry, that the participation of national banks and officers of national banks in any syndicate operations affecting securities that are listed on the Stock Exchange and carried through the mails and over the telegraphs all over the United States is not a competent subject of Congressional inquiry?

"MR. HENRY: No, sir, I do not think that that\*\* says that; because we have given you, Mr. Untermeyer, all the information that it seems to me has any bearing on that point. We have said there were no national banks in; that there were fifteen officers of these national banks in it. We have given you all the information of that kind that it seems to me has any bearing on this thing. I very much hope that the committee will not find it necessary to press that question. It seems to me that I have come down here and given you all the information that I can. I have not kept back a thing and have given the complete story of a very interesting and recent operation on the New York Stock Exchange. I have given our profits. I have given you the terms of our syndicate. I have given you the full machinery of everything in the way the transaction was handled, and I have given you full information as to the composition of the syndicate in so far as the banks, and so on,

---

\* This evidently refers to the question calling for the names of the officers of the national banks, etc.

\*\* Referring to the above memorandum.

were in it, and were not in it; and I very much hope you will not find it necessary to press for the names asked for.

"MR. UNTERMYER: Do you not realize, Mr. Henry, that in the absence of the names of the officers of the national banks who have participated in this syndicate, a reflection is left upon other officers of national banks in New York City who may not engage in that sort of enterprise?"

"MR. HENRY: I do not.

"MR. UNTERMYER: And that it is only just to them that these names should be given?"

"MR. HENRY: I do not know anything about—

"MR. UNTERMYER (continuing): That it is only just that the names should be given of those who had anything to do with that sort of business?"

"MR. HENRY: I do not see why there should be any reflection on those who have not gone in, because I do not see any reflection on those who have. \* \* \*

"THE CHAIRMAN: I want to state that the Committee appreciate the fact that you have testified without evasion, and with a desire on your part to furnish such facts as you consider you should furnish, acting under advice of counsel where you have come to a different conclusion, and the Committee also wants to express through its chairman that it considers it the duty of every citizen who believes in organized government, when summoned, to come here and furnish to the committee such information as he may have relating to a governmental inquiry. And the Committee would regret exceedingly that it would have to take action that it has decided to take and submit your name to the full Committee for its determination in turn whether the House should be asked to certify your name to the District Attorney, but the Committee must exercise its power. Power must be lodged somewhere and naturally the witness or his counsel cannot be the judge of that power.

"MR. HENRY: All right, sir.

"MR. UNTERMYER: Why do you not ask the permission of these gentlemen to furnish their names?"

"MR. HENRY: Because I do not think it is a proper thing for us to do."

The report of the Committee, after stating that the appel-

lant's contumacy had been certified for prosecution, etc., proceeds:

"Your committee is of the opinion that the information sought from Mr. Henry is germane to the question, whether national bank officers are being influenced by any form of reward to lend the money of their banks on newly-listed and unseasoned stocks? It was impossible for the Committee, without knowing the identity of the banks and officers, to determine whether these participations to officers were given for the purpose of inducing the banks they served to accept these new securities as collateral for loans, or whether they were so accepted" (*Id.*, p. 123).

Mr. Henry was not asked "whether national bank officers are being influenced by any form of reward to lend the money of their banks on newly-listed or unseasoned stocks" or "for the purpose of inducing the banks they served to accept these new securities as collateral for loans or whether they were so accepted." He was given no opportunity to testify as to this suggestion of impropriety in the offer or acceptance of such participations. The committee sought no information on that point.

The majority and minority reports of the Committee which were put in evidence by the appellant, show that the Committee had before it, however, enough to convince it that the prospective profits of such participations *might* constitute a "form of reward" by which national bank officers *might* be influenced in loaning the moneys of their banks; and it certainly needed no proof to enable it to determine that such participations *might* be given to bank officers for the purpose of inducing loans on the new securities, and that they *might* be so accepted.

This appears, conclusively, from the "committee's recommendations \* \* \* for enactment into law" (Section 3, R.; p. 237), viz.:

"R. *Participations by bank officers and directors in underwritings.* Officers and directors of national banks should be prohibited from participating in syndicates, promotions or underwritings of securities in which their banks are or may become interested as underwriters or owners, or as lenders thereon."

And the Committee reported a Bill embodying this recommendation. See draft "Bill to amend the National banking laws" (Section 14; *Id.*, pp. 241-2).

At the close of the examination, counsel for the appellant again moved for a dismissal of the complaint and for the appellant's discharge on the ground that no evidence had been given showing probable cause to believe the appellant to be guilty of any crime or offense against the laws of the United States, and that the Commissioner was therefore without jurisdiction in the premises. This motion was also denied and the Commissioner thereupon issued his commitment (Record, pp. 2, 3).

#### THE HABEAS CORPUS PROCEEDING.

The appellant being taken into custody under the commitment sued out a writ of *habeas corpus*, alleging in his petition that his imprisonment, restraint and detention were without authority of law, and that he was deprived of his liberty in violation of his rights, privileges and immunities under the constitution and laws of the United States, for the following reasons (*Id.*, pp. 3-5):

"(a) The said Commissioner was without authority, power or jurisdiction under the said Constitution and laws by reason of any of the matters and things contained and set forth in the said complaint, or in the indictment aforesaid, or in either of them, or by reason of anything presented or adduced upon the said examination, to entertain any charge against your petitioner, or to act or proceed in any manner in the premises.

"(b) At the time your petitioner \* \* \* refused to answer the questions which are set forth in the said indictment, the said Sub-committee was engaged in no investigation or inquiry, and was conducting no proceeding, upon which your petitioner could be required or compelled, under the Constitution and laws of the United States, to testify or give evidence before the said Sub-committee.

"(c) The resolution of the House of Representatives of April 25, 1912, \* \* \* was passed and adopted without and in excess of any power conferred upon the House of Representatives by the Constitution of the United States.

"(d) The passage and adoption of the said resolution constituted an encroachment upon the powers confided by the Constitution to the judicial branch of the government; and in conducting the investigation and inquiry thereby directed, the said Sub-committee assumed a power which could only be properly exercised by the judicial branch of the government.

"(e) The said resolution \* \* \* in so far as it undertook to require upon (*sic*) your petitioner to answer any of the questions which he refused to answer upon his examination before the said Sub-committee, was passed and adopted without and in excess of any power vested in the House of Representatives by the Constitution, and conferred upon the Sub-committee no power or jurisdiction to require or compel your petitioner to answer any of the said questions.

"(f) The matters sought to be elicited by the questions which your petitioner so refused to answer were, and are, your petitioner's personal and private affairs, and are also the personal and private affairs of the said firm of William Salomon and Company; and they are therefore matters into which neither the House of Representatives, nor the said Sub-committee, had, nor can have, under the constitution, any right, power, jurisdiction or authority whatsoever to make inquiry in aid of the legislative function.

"(g) The said resolution, in so far as it undertook to authorize the said Sub-committee to inquire of and concerning the names of National Banks, and of and concerning the names of officers of National Banks, who had participated in the said syndicate operations of the California Petroleum Company, was passed and adopted in violation of Title LXII of the Revised Statutes, which provides that no national banking association shall be subject to any visitorial powers other than such as are authorized by that Title, or are vested in the courts of justice, and was, for that further reason, wholly null and void.

"(h) None of the questions which your petitioner refused to answer on his examination as a witness before the said sub-committee was pertinent to any matter within the jurisdiction of the House of Representatives which was, at the time, before it for consideration, or proper for its examination, or to any fact bearing thereon.

"(i) The said indictment charges no crime or offense against the laws of the United States, and the evidence given before the said Commissioner and upon which he issued the said commitment failed to show probable cause to believe that your petitioner had been guilty of any such crime or offense.

"(j) The Congress of the United States is without power, under the Constitution and laws of the United States, to con-

stitute the matters and things specified in the said indictment a crime or offense against the United States.

"(k) Your petitioner's refusal to answer the questions did not constitute a crime or offense under any law of the United States.

"(l) If Sections 102, 103 and 104 of the Revised Statutes, upon which the said indictment purports to be based, or any other statute of the United States, were intended to make the acts specified in the indictment herein a crime or offense against the United States, and are to be construed as accomplishing that result, the same were enacted without, and in excess of, any power conferred upon the Congress by the constitution of the United States, and are null and of no effect."

The learned District Judge did not think it necessary to pass upon the soundness of any of the constitutional objections. According to his view the question whereby the committee sought to elicit the names of the national bank officers who participated in the syndicate did not invade the constitutional rights of the witness because, in his opinion—

(a) Congress had power to ascertain whether a national bank participated directly or indirectly in the organization of the California company, and that such an inquiry was not an exercise of the visitatorial powers which Congress has vested in the courts of Justice and in the Comptroller of the Currency; and that in asking the witness the names of the national bank officers the Committee did not encroach upon the domain of visitatorial power (p. 340).

(b) The fact that the Committee had already heard testimony to the effect that such officers did engage in such participations did not preclude the Committee from obtaining cumulative information upon that point (p. 341).

(c) The Committee might have considered it desirable to make the inquiry in numerous instances with a view of ascertaining whether such participations were engaged in frequently, and throughout the country, or only by the same set of officers of the same national banks, or whether such engagements were only occasional; and that as a result of such an inquiry Congress might have drawn conclusions upon which to base legislation (*id.*)

(d) Even though the Committee made its recommendation that officers and directors of national banks should be

prohibited from such participations upon the testimony before it, it might "very well have determined to *cite this (and other instances) in support of its conclusions and recommendations*" (*id.*).

He expressed no opinion as to the pertinency of the question which called for the name of the fourth member of the syndicate (*id.*).

#### ERRORS RELIED UPON.

The order of the District Court overruled all of the objections upon which the appellant, in his petition for the writ of *habeas corpus*, alleged that his imprisonment was without authority of law, and that he was, consequently, deprived of his liberty in violation of his rights, privileges and immunities under the constitution and laws of the United States (*ante*, pp. 19-21).

The errors into which we conceive the learned judge below to have fallen in reaching the conclusion of which we complain consisted :

In discharging the writ and remanding the petitioner; in holding that the petitioner's restraint and detention was not without authority of law, and that the petitioner was not deprived of his liberty in violation of his rights, privileges and immunities under the Constitution and laws of the United States (1st, 2nd and 3d assignments, p. 343); in holding that the Commissioner was not without authority, power or jurisdiction to entertain any charge against the petitioner or to act or proceed in the premises (4th assignment, *id.*); in refusing to hold that at the time the petitioner refused to answer the questions which are set forth in the indictment, the sub-committee was engaged in no investigation or inquiry, and was conducting no proceeding upon which the petitioner could be required or compelled under the Constitution and laws to testify or give evidence before the sub-committee (5th assignment, pp. 343 - 4); in holding that the resolution directing the investigation was not passed and adopted without and in excess of any power conferred upon the House by the Constitution, and that its passage and adoption did not constitute an encroachment upon the powers conferred by the Constitution on the judicial branch of the Government (6th and 7th assignments, *id.*); in holding that in

conducting the investigation the sub-committee did not assume a power which could only be exercised by that branch of the Government (8th assignment, *id.*); in holding that the resolution, in so far as it undertook to require the petitioner to testify beyond what he voluntarily chose to tell, was not passed and adopted without and in excess of any power vested in the House of Representatives by the Constitution (9th assignment, *id.*); in holding that the resolution conferred upon the sub-committee any power or jurisdiction to require or compel the petitioner to answer any of the questions which were propounded to him (10th assignment, *id.*); in holding that the matters sought to be elicited by the questions which the petitioner refused to answer were not the petitioner's personal and private affairs (11th assignment, *id.*); in holding that the matters sought to be so elicited were not matters in respect of which neither the House nor the sub-committee had, nor can have, under the Constitution, any right, power, jurisdiction or authority whatsoever to compel testimony in aid of the legislative function (12th assignment, *id.*); in holding that the resolution, in so far as it undertook to authorize the sub-committee to inquire of and concerning the names of officers of national banks who had participated in the syndicate operations of the California Petroleum Company, was not passed and adopted in violation of Title LXII. of the Revised Statutes and was not for that reason wholly null and void (13th assignment, *id.*); in holding that any of the questions which the petitioner refused to answer was pertinent to any matter within the jurisdiction of the House which was at the time before it for consideration or proper for its examination, or to any fact bearing thereon (14th assignment, pp. 344, 5); in holding that the indictment charged a crime or offense against the laws of the United States, and that the evidence given before the Commissioner showed probable cause to believe that the petitioner had been guilty of any such crime or offense (15th and 16th assignment, p. 345); in holding that Congress had power under the constitution and laws to constitute the matters and things specified in the indictment a crime or offense against the United States (17th assignment, *id.*), and that the petitioner's refusal to answer the questions constituted a crime or offense under any law of the United States (17th and 18th

assignment, *id.*); in construing section 102 of the Revised Statutes as applicable to an inquiry by a sub-committee of a Committee of the House solely in aid of the legislative function (19th assignment, *id.*); in holding that the section in question, as so construed, was a valid and constitutional enactment (20th assignment, *id.*); and was intended to, or does, make the acts specified in the indictment a crime or offense against the United States (21st assignment, *id.*); and in construing section 1014 of the Revised Statutes as authority for the petitioner's removal to the District of Columbia upon the facts disclosed in the petition (22d assignment, *id.*).

PETITIONER IS NOT A WILFULLY RECALCITRANT WITNESS.

It will be observed that the witness is not a wilfully recalcitrant witness. He answered freely without reserve all questions which related to his own business or the business of his firm. He answered questions involving others so far as he could without revealing the private business of his clients. But he refused to answer the questions involving the private affairs of his clients "because (to use Mr. Henry's own language) the relations between a banker and his client, while they are not, perhaps, perfect privileged relations such as those that exist between a lawyer and his client, or the doctor and his patients, are, nevertheless, confidential, and it is recognized by all honorable and decent business men that they should not tell the names of their customers unless compelled to do so"; Record, p. 49). Having been advised by his counsel that he was under no legal compulsion to answer the questions under discussion, Mr. Henry, as an honorable man, could not do otherwise than to refuse to answer them. Unfortunately the law provided no means for judicially determining in advance the propriety of the questions which Mr. Henry refused to answer, so that he had no choice between answering them in face of the advice of his counsel that he was under no compulsion to do so, or refusing to answer the questions, relying upon the advice of his counsel, and incurring the risk of an indictment.

## ARGUMENT.

The contention of the Government is that, whenever, in the judgment of the House of Representatives, that body is without adequate information upon which to frame, or intelligently consider, legislative measures which it is within the power of Congress to enact, or (to paraphrase the language of the resolution under which the sub-committee acted in the case at bar), whenever the House deems it advisable to gather the facts bearing on any conditions or charges, or in any way relating to conditions or charges, or to any subjects whatever, as a basis for "remedial or other" legislative purposes (Record, p. 13), the House may institute any investigation that it may conceive to be proper, and that in such investigation it has power to compel any person whom it may choose to call before it, to answer any question that may have a bearing upon any condition, charge or subject which the Committee may have under consideration at the time being.

The contention necessarily takes this extreme form, because such an inquiry is a general one. It is started by the House of its own motion for the purpose of enabling it to exercise successfully its function of legislation; and the power, if it exists at all, must permit of an inquiry into every subject in respect of which Congress can competently legislate.

According to the argument before this Court in *Harriman v. Interstate Commerce Commission*, 211 U. S., 407, the legislation which that Commission might recommend embraced "anything and everything that may be conceived to be within the power of Congress to regulate, if it relates to commerce with foreign nations or any of the several states;" and the result of the argument advanced by the Commission was "that whatever might influence the mind of the Commission in its recommendations is a subject upon which it may summon witnesses before it and require them to disclose any facts, no matter how private, no matter what their tendency to disgrace the person whose attendance has been compelled" (*Id.*, 417).

Mr. Justice HOLMES said :

"If we qualify the statement and say only, legitimately influence the mind of the Commission in the opinion of the

Court called in aid, still it will be seen that the power, if it exists, is unparalleled in its vague extent."

After noting the authority of the Commission to summon witnesses "from any place in the United States at any designated place of hearing," he added (p. 418):

"No such unlimited command over the liberty of all citizens was ever given, so far as we know, in constitutional times, to any commission or court."

And yet, according to the contention of our adversaries, an infinitely greater "command over the liberty of all citizens" was given to Congress by the constitution itself; for if the power asserted by the House of Representatives exists, that body can drag from his home and his business, wherever he may happen to be found within the United States, or in any of its possessions, to Washington, or to any other place where one of its committees may choose to sit, any person who possesses, or is thought to possess, information of any kind, however private or confidential, which the House, or its committee, or a sub-committee, may imagine helpful or convenient in the framing of legislation.

It is scarcely necessary to suggest the wrongs and abuses which might result from the oppressive exercise of such a power in times of popular excitement, or if perverted to the uses of party or faction; especially when, as here, "the method of the investigation has been of an unusual character," and the examination of witnesses has been conducted by a distinguished advocate, pursuant to an "agreement under which no member of the committee has been permitted to interrogate witnesses upon subjects material to the investigation" (Views of Mr. McMorran of the Committee; Record, p. 323).

Our position is, *first*, that even though the language of the statute upon which this prosecution rests were broad enough to cover the case, it should not be so construed, because such was not the intention of Congress, and *second*, that, if so construed, the statute is unconstitutional and void.

If we are wrong in both of these propositions, then we shall argue, *third*, that the appellant was entitled to refuse to answer the questions because they were not "pertinent to the question under inquiry" (*a*) being irrelevant to any matter within their cognizance, and (*b*) because the knowl-

edge sought to be derived concerning the identity of the national bank officers would not have enabled the Committee to examine into the transactions or affairs of the banks.

FIRST. EVEN THOUGH THE LANGUAGE OF THE STATUTE WERE SUSCEPTIBLE OF A CONSTRUCTION BROAD ENOUGH TO COVER THE CASE AT BAR, IT SHOULD NOT BE SO CONSTRUED BECAUSE SUCH A CONSTRUCTION WAS NOT WITHIN THE INTENTION OF CONGRESS.

(a)

If we were to assume that the Congress which enacted the law of 1857, which was, as we have seen, the forerunner of sections 102-4 of the Revised Statutes, contemplated its employment as a means of compelling citizens to furnish information in aid of legislation under penalty of imprisonment, we should have to attribute to that body an utter misconception of the representative character of our government.

The American Government was the first

"in which an attempt was to be made on a large scale to rear the fabric of social order on a basis of a written constitution and of a *pure representative principle*. \* \* \* The experiment certainly was entirely new. A popular government of this extent, it was evident, could be framed only by carrying into full effect the principle of *representation or of delegated power*; and the world was to see whether society could, by the strength of this principle, maintain its own peace and good government, carry forward its own great interests, and conduct itself to political renown and glory."\*

Webster, Speech on the Character of Washington,  
February 22, 1832; Works, Vol. I., pp. 222-3.

---

\* "In antiquity there were republics and democracies, but there was no representative system. \* \* \* But where the territory was extensive and the population scattered and numerous, there could be no Assembly of the whole body of citizens. To meet this precise difficulty, the representative system was devised. By a machinery so obvious that we are astonished that it was not employed in the ancient commonwealths, the people, though scattered and numerous, are gathered, by their chosen representatives, into a small and deliberate assembly, where without tumult or rashness they may consider and determine all questions which concern them. In every representative body, properly constituted, *the people are practically present*."

Sumner, "The Representative System and its proper basis."  
Speeches and Addresses, Boston, 1856, pp. 206-7.

When, by the constitution, the people delegated the legislative power to Congress, the members of the two Houses became the representatives of the people, charged with the duty of enacting proper laws and clothed with all the authority essential for the full performance of that duty.\*

"It is a sound and important principle," said Hamilton (Federalist, No. LV.), "that the Representative ought to be acquainted with the interests and circumstances of his constituents." And this is so because under our form of government, the people are the source of all power. Hence, as the people's delegate, the representative is bound to carry out their will.\*\* His duty in that regard was well defined by Clay, who in 1839, in discussing the then much bruited doctrine of "instruction," made these observations in the Senate:

"What is the basis, and what the principle of the doctrine of instruction? Sir, to a certain extent, I have always believed

---

\* "I freely acknowledge myself the servant of the people, according to the bond of service—the United States Constitution—and that as such, I am responsible to them."

Letter, Lincoln to James C. Conkling, Aug. 26, 1863: Nicolay & Hay, Vol. IX., p. 97.

\*\* This was the only point in our constitution that could be regarded as purely experimental. In England, where all governmental power is lodged in the Three Estates, the notion that the people should have a voice in the affairs of government never seems to have occurred before the adoption of our constitution. In a speech in the House of Commons (about 1771—the exact date cannot be ascertained), Burke said: "Faithful watchmen we ought to be over the rights and privileges of the people. But our duty, if we are qualified for it as we ought, is to give *them* information, and not to receive it from them; we are not to go to school to them to learn the principles of law and government. In doing so, we should not dutifully serve, but we should basely and scandalously betray the people, who are not capable of this service by nature, nor in any instance called to it by the constitution. I reverentially look up to the opinion of the people, and with an awe that is almost superstitious. I should be ashamed to show my face before them, if I changed my ground as they cried up or cried down men, or things, or opinions; if I wavered and shifted about with every change and joined in it, or opposed, as best answered, any low interest or passion; if I held them up hopes which I knew I never intended, or promised what I well knew I could not perform. Of all these things they are perfect sovereign judges, without appeal; but as to the detail of particular measures, or to any general schemes of policy they have neither enough of speculation in the closet, nor of experience in business to decide upon it." Works of Edmund Burke (London, 1852), Vol. VI., p. 119.

in this doctrine, and have been ever ready to conform to it. But I hold to the doctrine as it stood in 1798; that, in general, on questions of expediency, the representative should conform to his instructions, and so gratify the wishes, and obey the will, of his constituents, though on questions of constitutionality his course might be different; \* \* \* And what is the doctrine of instructions, as it is held by all? Is it not that we are to conform to the wishes of our constituents? Is it not that we are to act, not in our own, but in a delegated character? And will any who stand here, pretend, that whenever they know the wishes or will of those who sent them here, they are not bound to conform to that will entirely? Is it not the doctrine that we are nothing more than the mirror to reflect the will of those who called us to our dignified office?"

Works of Henry Clay: New York, 1897, Vol. VI, pp. 135-6.

That they may possess the qualifications which will enable them to act intelligently and effectually in their character of delegates, Representatives are chosen from those of the general body of citizens who are supposed to be best informed with respect to general conditions and the interests and wishes of their constituents on the various subjects which are within the purview of federal legislation. If at any time they feel embarrassed for lack of knowledge on these points, they may of course proceed in a proper way to the collection of such information as may seem important or useful. Such an investigation does not require the calling of witnesses or the compulsory "discovery" of "testimony." It can be done by private inquiries and research. That it involves the power to forcibly compel the enlightenment of the legislative mind and the guidance of its conscience through the instrumentality of an inquisition, to which any and all of the people may be subjected, is not only utterly at variance with the principle of representation, which as Hamilton said (*Federalist*, No. 62) is the "pivot" on which our government rests, but is abhorrent to all true conceptions of free institutions. The great advantage of a representative legislature is its capacity for the discussion of public affairs.\* The theory that the Congress of the United States can make

---

\* "For this the people collectively are extremely unfit, which is one of the chief inconveniences of a democracy."

Montesquieu, *Spirit of Law* (D'Alembert), Vol. I., p. 177.

use of the power which the people have delegated to it in order to compel the people to aid it, directly or indirectly in the discharge of its functions, is incompatible with the character of Congress as a representative body.

The relation of the American people and their Representatives in Congress is that of principal and agent, and the rules of law which govern that relation as between private parties, apply with equal force to the analogous relation which the people by the constitution created between themselves and their congressional delegates. The latter can no more demand as of right (though it may request and will always receive) the aid and co-operation of the people in the performance of its duties, than the private agent can rightfully call upon his principal to help him discharge the duties of his agency.

Is it to be imagined that the Congress of 1857 was wholly ignorant or disregarding of these fundamental truths? On the contrary, must it not be assumed that they had them constantly in mind? Let us suppose that when that body had this measure under consideration some member had suggested that a court might interpret the act in conformity with the contention which the Government here advances; would not such a suggestion have been ridiculed?

The fact is that when criticism was made of the general language of the measure, its author thought a sufficient answer was the statement that "The object which this Committee had in view was, where there was corruption in the House of Congress, to reach it" (*Post*, p. 42). This shows the absurdity of the claim that the Congress of 1857 intended to betray its trust, and by employing the power committed to it by the people, establish a new principle of government, violative of the spirit of the Constitution.

(b)

That Congress intended that the act should not apply to inquiries in aid of legislation is implied in the title of the act, which is "An Act more effectually to enforce the attendance of witnesses on the summons of the House and to compel them to discover testimony."

Obviously, the thought expressed in these words reaches only to investigations in respect of which one or the other of

the House of Congress, has judicial functions and is exercising the judicial power of the House, as distinguished from inquiries in aid of legislation.

The words "more effectually to enforce the attendance of witnesses" could scarcely have been used with reference to occasions on which, as everyone knows, there had never been the least difficulty in procuring their attendance. What Congress had in mind was a means of compelling witnesses to do something which they would otherwise be unwilling to do. This is seen in the use of the words "discover testimony." Language could not be found more clearly showing that the purpose was not to coerce mere information, but to extort evidence of wrongdoing from the mouths of reluctant or hostile witnesses—a right to search their consciences, and wring evidence from them against their will.

(c)

A consideration of the act of 1857 as a whole makes it apparent that there was no intention on the part of Congress that it should apply to inquiries in aid of legislation.

(i) Unlike statutes conferring authority to make inquiries in aid of legislation this act does not provide for any judicial review of the pertinency or relevancy of questions before the witness becomes liable to punishment for refusing to answer. In the inquiries conducted by the Interstate Commerce Commission Congress provides the machinery for this judicial determination. Where a witness refuses to answer, application is made to the court for a compulsory order and the witness is enabled to have the court decide the question of pertinency before he need face the danger of a contempt proceeding. This procedure was followed in the Harriman case. The lower court held the question proper and ordered Harriman to answer (*Interstate Commerce Commission v. Harriman*, 157 Fed., 432). Upon appeal this order was reversed (*Harriman v. Interstate Commerce Commission*, 211 U. S., 407).

The same is true of the New York statute governing inquiries by the legislature. If a witness refuses to answer a particular question, application is made to the court for an

order authorizing the imprisonment of the witness until he consents to answer. To issue the order the court must decide that the question is pertinent. The witness may appeal to the highest court, and only upon the final determination of the pertinency of the question against him is he liable to be imprisoned. This was the procedure in the *Matter of Barnes*, 204 N. Y., 108 (*post*, p. 91).

But under the act of January 24, 1857, there is no such provision. It is unthinkable that it would have been omitted if Congress had intended the statute to apply to inquiries in aid of legislation. For then an arbitrary power would result, foreign to every principle of constitutional government and unconscionably oppressive of the citizen. Without any restriction, and subject to no review as to the propriety of its ruling, Congress would be enabled to compel testimony, guided by no standard of pertinency or relevancy, on any subject which might influence its mind on the subject of legislation. Even if we qualify the statement, to paraphrase the language of Mr. Justice HOLMES, and say only, *legitimately* influence the mind of Congress, it will be seen that the power, if it exists, is unparalleled in its vague extent. (*Harriman v. Interstate Commerce Commission*, 200 U. S., 407, 417). The witness would be at the mercy of Congress. This non-judicial body would be the sole arbiter of all judicial questions involving the sacrifice of the citizen's right of privacy or else his very liberty. If the witness, as an honorable man, refuse to betray a business confidence, except under legal compulsion, and he is advised by counsel that the law does not require the sacrifice, he is unable to appeal to the court to protect him in his right or to have the question determined, but forthwith must submit to indictment as a criminal and accept the embarrassment and the financial burden of a criminal prosecution. Surely a construction of the statute which would accomplish this injustice was never within the intent of its framers.

(ii) By the first section of the Act its application is limited to persons who have been summoned, not to furnish information, but "to give testimony or to produce papers upon any matter before either House, or any Committee of either House of Congress"; and it penalizes the refusal to answer only such

questions as are "pertinent to the matter of inquiry in consideration" before the House or Committee by which he shall be examined. How can it be supposed that when Congress used this language it intended it to include general inquiries instituted for the purposes of gathering facts as a basis of legislation? What is the "matter of inquiry in consideration" before a Committee engaged in an educational effort of this character?

In *in re Chapman*, 166 U. S., 661, it was argued that the reference in Section 102 to "*any* matter under inquiry" and "*any* question pertinent to the matter under inquiry" was "fatally defective because too broad and unlimited in extent." But applying the rule that statutes should receive a sensible construction, such as will effectuate the legislative intention, and if possible avoid an unjust or absurd conclusion, this court construed the word "*any*" as referring to "matters within the jurisdiction of the two Houses of Congress, before them for consideration, and proper for their action; to questions pertinent thereto; and to facts or papers bearing thereon" (p. 667), and held that, so construed, the law was not open to constitutional objections (p. 672).

That inquiries in aid legislation, did not fall within this definition, is quite apparent from this passage in the opinion of Chief Justice FULLER (p. 671):

"The history of Congressional investigations demonstrates the difficulties under which the two Houses have labored, respectively, in compelling *unwilling witnesses* to disclose facts deemed essential to taking definitive action, and we quite agree with Chief Justice ALVEY, delivering the opinion of the Court of Appeals, 'that Congress possessed the constitutional power to enact a statute to enforce the attendance of witnesses and to compel them to make disclosure of evidence to enable the respective bodies to discharge their legitimate functions'; and that it was to effect this that the Act of 1857 was passed. It was an act necessary and proper for carrying into execution the powers vested in Congress and in each House thereof."

What "definitive action" can be taken by a Committee of Congress engaged in gathering facts? The most it can do is to report the facts with its recommendations, but this is not "definitive" action. It determines nothing. It is in no sense final or conclusive. On the contrary it is the very sort

of action which precludes the idea of definitiveness, being essentially conditional, provisional or interlocutory.

(iii) The presence of the word "pertinent" is inconsistent with a purpose of applying the statute to inquiries in aid of legislation. In the conduct of investigations of this character Congressional committees do not hold themselves bound either by the principles of judicial proceedings, or the established rules of judicial evidence, and deem that whatever may influence the minds of the committee in its recommendations to Congress, is a subject into which it may require witnesses to make full disclosure.

In *in re Pacific Railway Commission*, 32 Fed. Rep., 241, to which we later refer at length (*post*, pp. 65, *et seq.*), Mr. Justice FIELD observed that it was unnecessary to consider whether the interrogatories were proper in themselves. He said (p. 259) :

"It is enough that the federal courts cannot be made the instruments to aid the commissioners in their investigations. It also renders it unnecessary to make any comment upon the extraordinary position taken by them according to the statement of the respondent, to which we have referred, that they did not regard themselves bound in their examination by the ordinary rules of evidence, but would receive hearsay and *ex parte* statements, surmises and information of every character that might be called to their attention. It cannot be that the courts of the United States can be used in furtherance of investigations in which all rules of evidence may be thus disregarded."

(iv) Nothing affords a more apt illustration of the matters into which Congress sought adequate power of full and effectual inquiry than the presence of the second, or immunity, section. Statutory provisions of this character "have been for two centuries the expedients resorted to for the investigation of offenses whose proof and punishment were otherwise practically impossible, because of the criminal implication in the offense itself of all who could bear useful testimony."

*Wigmore*, vol. III., Sec. 2281 (p. 3166).

The obvious purpose of the section, like that of the immunity clause of the Anti Trust Law, was "to make evidence available and compulsory that otherwise could not be got".

*Heike v. United States*, 227 U. S., 131, 142.

Legislation of this sort is defended upon the theory that the people will benefit more, in certain emergencies, by an ability to compel testimony which would otherwise be protected from disclosure by the constitution, than they will lose in the escape of individual criminals from punishment. An investigation by either House of Congress into the conduct of its members, was, in the view of the Congress of 1857, such an occasion, the disadvantages of condoning the offense being supposed to be more than overcome by the resulting ability to extort evidence without which it would have been unable to determine the truth or falsity of charges affecting the integrity of the House. It might be reasonably argued that without such a law Congress would be impotent when it needed power most. But no one can seriously assert that information wrung from criminals in the course of a proceeding unfriendly and inquisitorial can ever be so valuable an aid to the exercise of the legislative function as to warrant a grant of immunity such as that which the Congress of 1857 extended to witnesses.

(v) Another singular circumstance throwing light upon the intent of Congress, is found in the third section of the Act, providing for the certification of the facts to the District Attorney of the District of Columbia.

Why did not Congress, knowing that Committees of either House have power to conduct their hearings wherever they see fit, make provision for the presentation of cases of contumacy occurring elsewhere than at the seat of government? It certainly knew that the criminal courts of the District of Columbia could not take cognizance of the case of a witness who refused to testify when in attendance before a Committee sitting at Boston or San Francisco. And it would have been very easy to provide that the speaker should certify the facts "to the district attorney for the district having jurisdiction of the offense". The absence of a provision of this sort can readily be explained. Committees engaged in inquiries looking to "definitive action", unlike those gathering facts for the enlightenment of Congress, hold their sessions, as a matter of course, in the Capitol at Washington. When, therefore, Congress limited the place of prosecution to the District of Columbia, it is clear that it intended that the statute should apply only to those investigations which the established

practice and the rules of orderly procedure required to be conducted at the national capital.

Quite differently did Congress provide when it passed the Act of February 19, 1851 (Chap. 11, 9 Stat. L., 569, Sec. 5) for the compulsion of testimony in contested election cases. As these inquiries are apt to be conducted anywhere in the United States the statute provides for the prosecution of a recusant witness wherever his contumacy occurs.

Again, when the Act of 1857 was debated, Congress had already passed the Act of February 19, 1851, providing for the compulsion of testimony of witnesses in contested election cases and punishing recalcitrant witnesses for contempt. Although the power to try contested election cases is included in the express grant of powers of the Constitution equally with the power of punishing members for disorderly behavior, Congress deliberately chose to cover each particular situation by the respective statutes. The statutes were intended only for the particular cases; and it was never dreamed that the Act of 1857 would be employed to coerce testimony where there was no charge of disorderly behavior of members or of corruption of Congress, but where eleven members of one of the Houses of Congress were, as Burke aptly expressed it (*ante*, p. 28, *note*), "going to school" to their constituents.

(d)

A consideration of the evil which the Act of 1857 was designed to remedy, of the circumstances surrounding the enactment, and the situation as it then existed and as it was pressed upon the attention of Congress, make it impossible to suppose that the Act was intended to apply to inquiries other than those which called for the exercise of the judicial power of Congress.

If the purpose and intent which led to the enactment of the Act of 1857 can be discovered and made plain, "it must clearly result, as that act was but the precursor" of section 102, that "the light generated by the original intent and purpose will afford an efficacious means for discerning the intent and purpose" of section 102.

*United States v. Press Publishing Co.*, 219 U. S., 1, 11-12.

The situation which called for the Act of 1857 and the circumstances attending its enactment were briefly but accurately stated by the Senate Committee on the Judiciary in 1876 when, in reporting adversely two bills which had passed the House, by which it was proposed to substantially re-enact the immunity provision of the Act of 1857 (which had been repealed in 1862, *ante*, p. 3), the Committee said :

" In January, 1857, one Simonton, a newspaper correspondent, having published a statement that members of the House of Representatives had sold or offered to sell their votes on pending measures, was brought before a committee of the House as a witness on the subject. He, stating that members had offered to sell their votes through him, refused to disclose the names of such members, on the alleged ground that it would be a breach of honorable confidence to do so. He was committed to prison for the refusal, and an act, *born of the emergency*, and doubtless believed to be just and efficacious, was passed through both Houses with great celerity, if not *with excessive haste*,\* providing for compulsory incriminating testimony, and for the pardon and indemnity of any witness who should testify before either House or its committees for any crime concerning which he should be examined. The bill was treated on all hands as one of legislative pardon, and its scope was described as 'intended to grant a parliamentary

---

\* In the course of the debate on the Bill Mr. Burnett said :

" The accused is in the power of the House and in the custody of the Sergeant at Arms. If he refuses to answer where is your power to punish him for it? Will you send him to jail? (Many cries of 'yes'.) Where is the law for it? Where is your power to deprive even the humblest citizen of his liberty? \* \* \* The courts in the different states all exercise the power to punish contempts. Is it done without authority of law? Is it a power incident to their organization, or is it only exercised in accordance with law? If gentlemen will look to the different states they will find that this power is exercised either by express statute or in accordance with the common law, and never otherwise. The legislatures of the several states may exercise this power unless expressly deprived of the right by the organic laws of the state, for they can exercise all the powers of government not forbidden. But, Sir, how is it with us? We can only exercise such powers as are expressly granted or incident to those expressly granted. When we examine the question of the privileges of this House, we must first look to the Constitution, and we there find that the express grants of privileges are very few. What are they? Exemption from personal arrest; exemption from question elsewhere for what is said in the House, and power over our members and proceedings. For the exercise of these powers no statute is necessary, the Constitution being the law. But, Sir, there is another power conferred, and if it had been exercised we would have no difficulty in this case. We have the power to make all laws necessary and proper for carrying into execution the powers vested in us by the Constitution. This power, with the express grants enumerated, confers upon Congress full power to pass a law punishing a witness for contempt. Congress has failed to exercise this power and we are now called upon to deprive a citizen of his liberty in the absence of any express law warranting it" (Congressional Globe, Part 1, 1856, 1857, 34 Congress, 3d Session, pp. 407, 408).

pardon beforehand to every witness who, on the summons of the House or a committee, should appear before them and testify to any acts of which he may have been guilty' (Globe, 3d Sess. 34th Cong., p. 427).

"A small number of members of the House, not thrown off their balance by indignation at such charges, and not fearing popular clamor, pointed out the dangers of such legislation, but the House refused to refer the bill to the Judiciary Committee for consideration, and, under an excitement well illustrating the great danger of investing any part of the pardoning power in large assemblies, at once passed the bill.

"In the Senate very little time was taken for consideration. The bill was received during the discussion of a telegraph question, referred to the Judiciary Committee, reported within half an hour, and was passed the next day."

Smith's Digest of Decisions and Precedents  
(Senate Doc. No. 278, 53d Cong., 2d Sess.), p. 564.

The Select Committee before which Simonton refused to give testimony was appointed pursuant to the following resolution :

"Whereas certain statements have been made charging that members of this House have entered into corrupt combinations for the purpose of passing and preventing the passage of certain measures during the present Congress ; and

"Whereas, a member of this House has stated that the article referred to is not wanting in truth ; therefore,

"Resolved that a Committee, consisting of five members, be appointed by the Speaker, with power to send for persons and papers to investigate said charges ; and that said Committee report the evidence taken, and what action, in their judgment, is necessary on the part of the House, without any unnecessary delay."

Cong. Globe, 34th Cong. 3d Sess., pp. 275, 302.

One of the questions which Simonton refused to answer was the following : " You state that certain members have approached you and have desired to know if they could not through you procure money for their votes upon certain bills ; will you state who these members were ? "

In response to other questions of similar import he said : " Two have made them direct, others have indicated to me a desire to talk with me with these subjects, and I have warded it off, not giving them an opportunity to make an explicit proposition."

To the question : " What do I understand you to mean when you say these communications were made direct ? " Simonton answered : " I mean that after having obtained my promise of secrecy in regard to them they have said to me that certain measures pending before Congress ought to pay ; that the parties interested in them had the means to pay ; that they individually needed money, and desired me specifically to arrange the matter in such way that if the measures passed they should receive pecuniary consideration."

*Id.*, p. 403.

The bill which resulted in the passage of the Act was introduced by the Select Committee on January 21, 1857, and accompanied a report in which, after setting forth Simonton's contumacy, the Committee said :

" It is due to the dignity and reputation of the American Congress to purge itself of such unworthy members if they have thus shamelessly prostituted their high and honorable positions to such base purposes. The country has the right to know who have betrayed the trusts confided to them by their constituents. The honest men of the House should aid, by the exercise of all the powers with which they are vested, to secure the names of the supposed guilty parties, and thereby shield the general reputation of the body as well as their own characters from unjust and improper interpretations and suspicion " (*Id.*).

Reference to the report is justified (*Oceanic Steam Navigation Co. v. Stranahan*, 214 U. S., 320, 333 ; *Northern Pacific Co. v. Washington*, 222 U. S., 370, 380 ; *McLean v. United States*, 226 U. S., 374, 380), and gives support to our contention.

The first and second sections of the Bill as introduced were substantially the same as those enacted. These sections, with slight verbal modifications, and the third section, were embodied in a substitute measure which was introduced by James L. Orr, the Chairman of the Committee,\* the following day.

The Committee concurred unanimously in the opinion that the House was clothed with full power to punish Simonton for contempt ; and by a resolution of the House, which was

---

\* Speaker of the succeeding Congress and subsequently Governor of South Carolina.

adopted by a vote of 164 to 16, he was taken into custody and subsequently committed to jail.

Although the meaning of a statute cannot be determined from statements made in debate (*United States v. Trans-Missouri Freight Association*, 166 U. S., 290, 318; *Omaha Street Ry. v. Interstate Commerce Commission*, 230 U. S., 324, 333), "that rule, in the nature of things, is not violated by resorting to debates as a means of ascertaining the environment at the time of the enactment of a particular law, that is, the history of the period when it was adopted."

*Standard Oil Co. v. United States*, 221 U. S., 1, 50.

It appears from the debates on the bill that a small minority did not believe that the House possessed the power to commit "without the passage of a law or the adoption of a rule on the subject." In view of this, Howell Cobb of Georgia said he thought the matter should be placed beyond question.

The Speaker having suggested a doubt whether the bill ought not to be confined to the specific case before the House, Mr. Orr answered (pp. 405-6):

"In reply to the suggestion of the chair I have to say that the Committee may not be able to proceed in their investigation so as to report the facts to the House unless such a bill is passed to give us authority to bring witnesses before us and to inflict a greater punishment than the Committee believe the House possesses the power to inflict. Some gentlemen say that the very fact of presenting this bill is an admission that the House has no power upon this subject, and that it negatives the resolution which we have already adopted. No such thing. The power of the House I believe it is conceded by all, in reference to the punishment which it can impose for a breach of its privilege or for contempt, terminates with the adjournment of Congress. It terminates upon the 4th of March; and the Committee are satisfied that if the House exercise all the power which the majority on this floor claim that it can exercise, that will be insufficient to extort testimony from unwilling witnesses. That is the position in which we are placed, and that is the reason for the necessity of this special report from the Select Committee.

\* \* \* \* \*

"The object of the bill reported by the Committee is to give additional authority, and to impose additional penalties on a witness who fails to appear before an investigating Committee of either House of Congress, or, who, appearing, fails to answer any question. Now, sir, I do not propose to state what has transpired in Committee; but I can suppose a case,

and that is this, that when a witness is brought to a particular point—to material facts within his knowledge, with reference to the combinations which we are charged to examine into, he folds his arms and says to the Committee: 'I decline to answer that question because it will criminate myself.' Well, sir, that would, in the opinion of the Committee, be a sufficient reason why the witness should not be called upon to answer the question. Now, sir, I submit that it would be the result of the merest accident in the world if we should ever find a single witness who could testify to a single fact of an improper influence brought to bear on members of Congress without, in that testimony, implicating himself."

Speaking of the inadequacy of the punishment which the House itself might inflict on a recusant witness, he said (pp. 405-406) :

"The House considers that the excuse which he tenders for his contumacy is insufficient, and the House orders him into the custody of the Sergeant-at-Arms. Until when? Your power to punish for any contempt committed against the authority of the body of which you are members, expires unquestionably when the commission of the members constituting that body expires. \* \* \* I believe that no one has ever held that the House has authority to go beyond the limitation of the term for which the members are elected in punishing witnesses for contempt of the authority of the House. Is that punishment adequate? What would be the term of the imprisonment? Take the case we have had before this House, and the imprisonment under its order could not be more than five weeks. \* \* \* I do not know but what the parties supposed to be implicated by this witness may be able to relieve themselves from all suspicion. But suppose they are not—suppose they are involved to the extent of hundreds and thousands of dollars; how much, then, might they afford to pay to a defaulting or recusant witness in consideration that he would undergo this punishment? The necessity of it is illustrated by another case which I may suppose. Suppose that two days before the adjournment of this Congress there is a gross attempt on the privileges of the House by corrupt means of any description: then the power of this House to punish extends only to those two days. Is that an adequate punishment? Ought we not then to pass at once a law which will make the authority of the House respected, and in addition to that, after this bill has passed, this House will turn these matters over to the courts—the tribunals which have the time, education and facilities for investigating such charges? This House cannot undertake to constitute itself a court to determine all these things because it would

consume too much of its time. Our entire session might be exhausted by them if there were a series of contempts. \* \* \* The House ought to lend every aid in its power to any committee to ferret out and smoke out any such corruptions as are charged. \* \* \* His statement is that two members of this House made direct propositions to him to secure money for their votes to pass certain bills pending before Congress. He makes the charge explicitly and distinctly. \* \* \* I want power from this House to extract the facts from that witness."

Henry Winter Davis, of Maryland (also of the Committee), said (p. 407) :

"Do gentlemen tell me that a year's confinement in the penitentiary and a fine of less than \$1,000 is a punishment inside of the enormity of the offense of a witness refusing to answer a question which he already states he can answer, touching the purity, the honor, the dignity—aye, sir, the honesty of this House, in reference to a charge which discredits every member of this House, and which tends to break down the moral authority of the law of the House? \* \* \* This is a matter which touches the very dignity and, ere many years, will touch the very existence of the Republic."

Speaking of the purpose of the second (immunity) section, Mr. Davis said (p. 427) :

"It is to remove the obstacle to the *investigation of parliamentary corruption* by offering in this solemn way to the party beforehand, on his being summoned in order to give testimony, a parliamentary pardon for every criminal act that he may disclose himself to have been guilty of."

It was Humphrey Marshall of Kentucky who moved to commit the bill to the Committee on the Judiciary. He thought its language was entirely too broad, and that under it a manufacture called before a committee having a tariff measure under consideration, who refused to testify as to the manner in which certain colors were produced might be put in the penitentiary (*Id.*, pp. 429-30). George G. Dunn, of Indiana, was, however, the only other member of the House who expressed any similar concern (*Id.*, p. 431). In answer to these criticisms, Mr. Orr indignantly protested :

"The object which this Committee had in view was, *where there was corruption in either House of Congress to reach it.*"

Later he said that the committee was

"better prepared to report a bill on this subject than any other in the House \* \* \* because they have been tracking up this matter for the last ten or twelve days, and they know *what legislation is necessary to extort that which they know is material to the vindication of the integrity and reputation of this body*" (*Id.*, 432).

Further :

"The great object intended to be accomplished by this bill is to enable the House to purge itself; and it is more important that the House should purge itself than that an individual should be convicted before a criminal court. \* \* \* When an investigation is instituted to see whether bribery and corruption and other improper influences have been resorted to to influence members of Congress, we desire to be able to get that information before us which will enable the House to purge itself of a corrupt member. For, Sir, I imagine the law itself would be of little moment or little avail if the great source and fountain of all law was corrupted. It is important, therefore, in that aspect of the case, that the bill should pass so that we may compel disclosure" (*Id.*).

The motion to refer to the Committee on the Judiciary was defeated by the vote of 132 to 71, and the Bill passed the House by the vote of 182 to 12. It was immediately sent to the Senate, where it was debated, and passed by the vote of 46 to 3 the following day, January 23. It was approved by President Pierce on January 24, 1857.

The following passages are taken from the Senate debate :

"When the Committee came to make this witness testify, he replied 'You have no power, or if you have, I will disobey your authority.' In such a case some say there is no punishment; others hold that you may punish; but at all events the punishment is inadequate. And they say, it being our duty and our clear right, under the statute which we passed ourselves, to *punish our own members for corruption*, we will seek the ordinary modes which are necessary in the exercise of that power to ascertain the truth of the allegation. *That is all this bill seeks to do*" (Robert Toombs of Georgia, *Id.*, p. 436).

"It is levelled at any man, and every man who, being cognizant of any *corruptions* on the part of any member of Congress on any subject into which Congress pleases to inquire, shall refuse to give testimony before a committee in order that the guilty party may be brought forth and sentenced" (James A. Bayard of Delaware, *Id.*, p. 438).

"Without some law of this kind we have found all previous efforts of inquiry futile. Now the charge is brought home so as to shock the sense of Congress—brought home by a witness who deliberately tells them 'I have been offered a *bribe by two members of your body*, but it is against my honor to disclose the names of those men who have asked me to do an act disgraceful to myself as well as to them! \* \* \* I therefore hold, sir, that in the particular case which has given origin to this bill, and has brought it specifically before the people as well as before Congress, action becomes necessary. In order to render that action effectual a bill of this sort, though it may contain provisions which I would wish differently molded, is primarily necessary to be passed" (*Id.*, p. 439).

William H. Seward of New York called attention to the absence of any specification of the subject which Congress might be investigating saying:

"It might be foreign from all the provisions of the Constitution; it may be a local question; it may be a personal question; it is not necessarily a public question. To be sure, I shall be answered that great legislative bodies will not institute inquiries into matters which are foreign from their jurisdiction. That may be so, generally, but it is not always true" (*Id.*).

To which Senator Bayard responded:

"It is a rule of law very well settled that if there is no jurisdiction over the subject matter, the proceeding is void. In such a case, of course, a court of justice would decide that the witness could not be compelled to answer for want of jurisdiction" (*Id.*).

What Senator Seward was really concerned about was, not that the courts would not limit the scope of the act to the subjects to which Congress intended it to apply, but that Congress might predicate upon its broad and sweeping language an undue extension of its powers. He did not think reliance could be placed on the expectation that legislatures would not transcend their jurisdiction. The history of such bodies showed, he said, that constituted as they were, especially in a republican or free country, there was a tendency at times to "high political excitement." Legislative usurpations such as had taken place in France and England might not happen here. Nevertheless, since the bill, if it was to become a law, might stand for a thousand years, he thought it ought to be made right. He therefore proposed to insert

after the word "inquiry" the words "within the constitutional jurisdiction of Congress, or of either House of Congress" (*Id.*).

Senator Bayard answered :

" I am aware that legislative bodies have transcended their powers—that under the influence of passion and political excitement they have very often invaded the rights of individuals, and may have invaded the rights of co-ordinate branches of the Government ; but if our institutions are to last, there can be no greater safeguard than will result from transferring that which now stands on an indefinite power (the punishment as well as the offense resting in the breast of either House), from Congress to the Courts of Justice. When a case of this kind comes before a court will not the first inquiry be, have Congress jurisdiction of the subject matter ?—has the House which undertakes to inquire jurisdiction of the subject ? If they have not, the whole proceedings are *coram non judice* and void. The Court would quash the indictment if this fact appeared upon its face, and if it appeared on the trial they would direct the jury to acquit " (*Id.*, p. 440).\*

Senator Toombs was of the same opinion. He said :

" If either House should attempt to take up a subject over which they had no power, no bill passed by Congress could give them authority, nor could it diminish any power given them by the Constitution " (*Id.*).

Speaking of the occasion which called for the enactment of the measure, Senator Toombs had previously said (*Id.*) :

" Sir, you cannot get from me a vote of condemnation for the most miserable wretch that may hang around the purlieus of the capitol until you have a law defining the act which he has done to be criminal. I would not be criminal or base enough to vote to punish a man against law under any of your pretended privileges of Parliament. No matter what his act may be, I would not vote to punish him under any indefinite idea of privilege. We must have a law and then I will put him under the operation of the law. *This law will punish the people whom it is intended to reach.* If you defeat this bill, you have no law on the subject and then, of course, the worst

---

\* The word "any" as used in section 102 of the Revised Statutes "refers to matters within the jurisdiction of the two houses of Congress, before them for consideration and proper for their action ; to questions pertinent thereto ; and to facts or papers bearing thereon." *In Re Chapman*, 168 U. S., 661, 667.

criminals may come here and no matter what may be their offenses against the Body, those who hold my notions cannot consent to punish them under any vague notions of privilege."

Senator Bayard added :

"The evils of which we have heard as existing by rumor for several years have now assumed distinctive authority, and the desire is to ascertain if they exist. \* \* \* This bill does nothing by way of extending the powers of either House; but it transfers to the judiciary of the country, the appropriate tribunal which is untouched by political passions, the control of the witness, and gives them cognizance of the facts necessary to establish the guilt of the witness who refuses to answer. \* \* \* Under these circumstances, I can see no reason why the bill should not be sustained by the Senate in order that, if the corruption which has been alleged for years as existing in Congress, and of which we have now specific charges, does exist, the country may know who are the individuals upon whom to fix it, and that they may be held up to the scorn of their constituents, and the condemnation of the whole country" (*Id.*, pp. 444-5).

It will thus be seen that while the generality of the phraseology was made the subject of comment in both Houses of Congress, no apprehension was felt on that score, Congress having full confidence that the courts when called upon would limit and confine its broad language to the particular class of investigations which it was intended to cover, and would not extend it to those which were not within that intent.

(c)

So far as we are informed, Congress has never before attempted to convert this statute into an authority for the prosecution of a witness refusing to testify in the course of an inquiry in aid of legislation.

The circumstances of the *Simonton* case (*supra*, pp. 37, *et seq.*) show why the Act was passed.

Since its enactment it has been made the basis of prosecution in only three cases. Two of them (*Wolcott* and *Chapman*) were precisely like the *Simonton* case. In the third (*United States v. Kilbourn*, *post*, p. 49) the prosecution was abandoned when this court held, in *Kilbourn v. Thompson*, *post*, p. 55, that the committee was without jurisdiction.

*The Wolcott Case.*

The first case arising under the Act was that of John W. Wolcott, which arose in 1858. Charges had appeared in the public press that the firm of Lawrence Stone & Company of Boston had expended \$87,000 in order to procure the passage of the Tariff Act of 1857, and declared that the votes of members were bought to procure the legislation. The House raised a Select Committee to investigate these charges, and directed it to ascertain whether "any member, officer or employee of the then or present House were in any way connected with the receipt or disbursement of said sum of money," etc. (Smith's Digest of Decisions and Precedents, Senate Doc. No. 278, 53d Cong., 2nd Sess., p. 201.) The testimony showed that of the \$87,000 charged upon the books of Lawrence Stone & Company as having been expended to procure tariff legislation, \$58,000 had gone into the agent Wolcott's hands. He was asked whether he received this sum. He refused to answer except to state that he did not receive any sum for the purpose of influencing the action of Congress. On February 11, 1858, Mr. Stanton (Ohio), on behalf of the Committee reported Wolcott's refusal to testify and offered a resolution that the Speaker issue a warrant to the Sergeant at Arms to arrest Wolcott and bring him to the bar of the House, to answer for his contempt. In support of the resolution, Mr. Stanton stated that the books of the Company showed this large sum to have been placed in Wolcott's hands and was charged to the account of Procuring the Passage of the Tariff Act. The Committee demanded to know of the witness his use of the fund. The Committee contended that it was not to be foreclosed from inquiry by Wolcott's mere conclusion that he received no money for the purpose of influencing Congress. During the discussion in the House, reference was made to the Act of January 24, 1857, which was passed in the then last session. The witness, with the assistance of his counsel, Reverdy Johnson, resisted the examination by the Committee. He was not without his defenders among members, who differed with the supporters of the resolution and contended that his denial of the receipt and use of money for improper purposes ousted the Committee of further jurisdiction; that an inquiry into how he used his funds for any purpose would unwarrantably invade his private affairs. The

Sergeant at Arms arrested Wolcott and brought him to the bar of the House. He persisted in his refusal to answer. His excuse was deemed insufficient. In moving to proceed against him, Mr. Stanton stated (p. 259) that one of the few *quasi* judicial powers of the House was the right to judge of the election returns and qualifications of its members, to punish them for disorderly behavior and, with the concurrence of two-thirds, to expel them. The House had the power to defend itself against defamation.

"A legislative body," said he, "without the power to purge itself by the expulsion of a member for bribery would be an object of scorn and contempt. It is a power that has been exercised a thousand times in the English Parliament, by this House, by the legislatures of the various states of the Union, and has never been denied by any judicial tribunal or legislative body. The power to investigate and to try a member is merely the exercise of the power to punish or expel" (p. 261). \* \* \* *The case of Simonton at the last session was precisely like this*" (p. 362).

On February 15, 1858, Wolcott was committed to the common jail by order of the House. On March 4, 1858, he was indicted by the Grand Jury of the United States for the District of Columbia under the Act of January 24, 1857, for refusing to answer a question as to his receipt from Lawrence Stone & Company of \$30,000, more or less. It does not appear from the records that his case was certified by the Speaker to the United States Attorney, as provided by the Act, but on March 22, 1858, Mr. Stephens, of Georgia, offered a resolution which in the preamble states that the Speaker did certify the contumacy of the witness to the District Attorney under the statute, and laid the case before the Grand Jury, resulting in the indictment and the delivery of Wolcott over to the marshal of the District of Columbia. Wolcott was admitted to bail and returned to Boston. The records of the Supreme Court of the District of Columbia show that he submitted an affidavit on April 17, 1858, of his inability to go to trial at that time, owing to illness in his family, and that on March 17, 1859, a *nolle prosequi* was entered by the United States Attorney upon the payment of \$1,000 and costs by his surety. (U. S. v. Wolcott, Criminal Docket, 1859, Supreme Court of the District of Columbia. Smith's Digest of Decisions and Precedents; Sen. Doc. 278, 53rd Congress, 2nd Session, p. 201.)

*United States v. Kilbourn.*

The next case in which an indictment was found under this statute was that of Hallet Kilbourn. At present only brief mention need be made of this case. We treat of it at length later on (*Post*, pp. 55, *et seq.*). Kilbourn, a real estate dealer in the District of Columbia, was summoned before a Committee of Congress known as the "Real Estate and Jay Cooke Indebtedness Committee." This committee was appointed pursuant to resolution of January 24, 1876 (1st Session, 44th Congress) which recited that through the Secretary of the Navy the Government had made deposits with the banking house of Jay Cooke & Company of its public funds; that Jay Cooke & Company were bankrupt and their affairs were being administered in the District Court for the Eastern District of Pennsylvania; that the Bankrupts were alleged to have a large interest in "the Real Estate Pool"; that the Trustee of the bankrupt estate had recently made a settlement of this interest to the loss of the creditors, including the United States, and that as the courts are now powerless to afford adequate redress, it was resolved that the Committee inquire into the nature and history of the said Real Estate Pool, the character of said settlements, the amount of property in which Jay Cooke & Company were interested, etc., and with power to send for persons and papers and to report to the House (Senate Misc. Documents, Second Session, 53d Congress; Digest of Decisions and Precedents, 536). Kilbourn was asked among other things to *disclose the names and residences of the members of his pool*, which he declined to do. He was brought to the bar of the House and upon the Speaker's warrant, the Sergeant of Arms committed him to the common jail of the District of Columbia. On March 27, 1876, he was indicted by the Grand Jury of the District of Columbia for refusing to answer the questions and produce the books before the Committee under the Act of January 24, 1857, as amended, and as carried into the Revised Statutes in 1874, in its present form, as Sections 102, 103, 104, R. S. U. S. It does not appear from the records that the Speaker certified his alleged contumacy to the District Attorney.

Kilbourn sued out a writ of *habeas corpus* in the Supreme Court of the District of Columbia, but it is stated in the opinion of Chief Justice CARTER, of that court (Matter of Kilbourn's petition for a writ of *habeas corpus*; No. 11314,

Criminal Docket, Supreme Court, District of Columbia) that the Speaker did certify the alleged offense of Kilbourn to the District Attorney under the statute; and the District Attorney having presented the matter to the Grand Jury, the indictment followed. The court ordered the writ to issue, discharging Kilbourn from his confinement in the jail upon the ground that as he was now indicted, he was entitled to bail pending trial. The court held that the certification of the alleged contumacy by the speaker to the United States Attorney transferred the case to the courts, and the power of the House to punish for contempt expired and the punishment prescribed by law supervened. The court did not go into the merits of the case or consider the jurisdiction of the House to institute the investigation.

The case reached this court upon Kilbourn's action for false imprisonment against Thompson, the Sergeant at Arms of the House of Representatives and certain members of the House. *Kilbourn v. Thomson*, 103 U. S., 168. It being decided that the House had no jurisdiction to conduct the inquiry the indictment was not pressed and the matter ended. (*U. S. v. Kilbourn*, 11,314 Criminal Docket, Supreme Court of the District of Columbia. Smith's Digest of Decisions and Precedents; Sen. Doc. 258, 53rd Congress, 2nd Session, 547, 552.

*United States vs. Chapman.*

The next and best known case under the statute is that of Elverton R. Chapman, which arose in 1894, and in which case this court has construed the Act. There had been charged publicly in the press that there was corruption in the Senate in connection with the passage of the sugar schedule in the Wilson tariff bill. Allegations were made that senators were being influenced in their votes by reason of their speculation in sugar stocks. Chapman, a New York stock broker, confessedly dealing in the stocks of the American Sugar Refining Company, was asked by the Committee raised to investigate the charges, whether any senator has been or is speculating in what is known as "sugar stocks" during the consideration of the tariff bill now before the House. He stood mute and refused to answer either yes or no. His contumacy was certified to the United States Attorney for the District of Columbia and his indictment followed. His conviction was affirmed by this court. (*In re Chapman*, 166 U. S.,

667 1896). The court pointed out that the Senate was engaged in an inquiry into the conduct of its members; that this was one of the few *quasi* judicial powers confided to either House of Congress, and that in the conduct of such an inquiry they had the right to compel *testimony if pertinent*. Chapman admitted that he dealt in these stocks, and it is manifest that the question whether he had bought or sold any for any senator was directly pertinent to the matter under inquiry by the Senate.

SECOND. IF SECTION 102 OF THE REVISED STATUTES IS TO BE SO CONSTRUED AS TO MAKE IT APPLICABLE TO INQUIRIES IN AID OF LEGISLATION, IT IS UNCONSTITUTIONAL.

It is inconceivable that the statute was intended, or could be made to apply to officers of the executive or judicial branches of the government. The former have always asserted, without effective challenge, the right to decide for themselves, independently of all other authority, what information coming to them in their official capacity the public interests permits to be communicated, and to whom; and if the judges of the courts of the United States cannot be required to give opinions in the nature of advice concerning legislative action (*Muskra v. United States*, 219 U. S., 346) they certainly cannot be called upon to furnish, in their judicial capacity, information for that purpose. The statute then, applying only to the people at large, that is, private citizens who hold no office under the government, the inquiry is whether the people who have *delegated* the legislative power to Congress, and imposed upon that body the duty of making laws, can be compelled, under pain of fine and imprisonment to assist Congress in the discharge of those duties. We submit that Congress can no more demand this service from the people than the executive or judicial departments of the Government can call for a similar sacrifice to enable them to perform *their* respective functions.

Any other view would lead to the most preposterous results. If Congress has power under the Constitution to pass laws compelling the people at large to aid the discharge of the functions and duties which it has delegated to that body, the power is certainly not limited to mere information. It must follow that either House can with equal validity demand

their counsel and advice whenever they may feel the need of it. And, according to the the same notion, it may require the mass of the people to aid the executive and judicial departments to the same extent, whenever those branches of the Government may feel themselves in need of information or guidance in the execution of their functions, and that it can punish all those who fail to respect such demands.

It would be easy to put striking examples of the evils and oppressions of which the power asserted might be made the instrument. But they may be summed up at once, and without the least exaggeration in the remark that, if the proposition be well grounded, then "those fundamental guarantees of personal rights that are recognized by the constitution as inhering in the freedom of the citizen" (*Interstate Commerce Commission v. Brimson*, 154 U. S., 447, 479) are, by the constitution itself placed absolutely at the mercy of a resolution of a single branch of Congress.

The "theory of our governments, State and National, is opposed to the deposit of unlimited power anywhere."

*Loan Association v. Topeka*, 20 Wall., 655-663.

Consequently, the fourth amendment provides that "the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated"; and the fifth that no person shall be "deprived of life, liberty or property without due process of law."

In the *Slaughter House Cases*, 16 Wall., 36, 127, Mr. Justice SWAYNE said: "Liberty is freedom from all restraints but such as are justly imposed by law. Beyond that line lies the domain of usurpation and tyranny."

In *Matter of Davies*, 168 N. Y., 89, the court said (p. 105):

"It includes liberty of action which is interfered with by a command to lay aside all business and excuses and appear at a designated place and give testimony. It embraces the right to keep secret one's books and papers, his business methods and his knowledge of his own affairs."

In *Boyd v. United States*, 116 U. S., 616, it was held that a law of congress, which authorized a court of the United States in revenue cases, on motion of the government attorney, to require the defendant or claimant to produce in court his private books, invoices and papers, or that the allegations of the government respecting them should be taken as confessed, was unconstitutional and void as applied to suits for

penalties or to establish a forfeiture of the party's goods. The court, speaking by Mr. Justice BRADLEY, said (p. 631):

"And any compulsory discovery by extorting the party's oath, or compelling the production of his private books and papers, to convict him of crime or to forfeit his property, is contrary to the principles of a free government. It is abhorrent to the instincts of an Englishman; it is abhorrent to the instincts of an American. It may suit the purpose of despotic power; but it cannot abide the pure atmosphere of political liberty and personal freedom."

In *in re Pacific Railway Commission*, 32 Fed. Rep., 241, Mr. Justice FIELD, after quoting the above passage, observed:

"The language thus used had reference, it is true, to the compulsory production of papers as a foundation for criminal proceedings, but it is applicable to any such production of the private books and papers of a party *otherwise than in the course of judicial proceedings, or a party suit for that purpose*. It is the forcible intrusion into, and compulsory exposure of one's *private affairs and papers*, without judicial process, or in the course of judicial proceedings, which is contrary to the principles of a free government, and is abhorrent to the instincts of Englishmen and Americans."

The right of the individual to keep secret his books and papers, his business methods and his knowledge of his own affairs may, of course be interfered with *when the general good requires it*. Thus the power to punish for contempts, which is universally acknowledged to be vested in courts of justice, exists because it is "essential \* \* \* to the due administration of justice."

*Ex parte Robinson*, 19 Wall., 505, 510.

In *Cooper's case*, 32 Vermont, 253, it was said (p. 257) that this power of the courts is "implied because it is *necessary to the exercise of all other powers*."

"Considerations of inconvenience must give way to the paramount right of the litigants to resort to evidence which it may be in the power of witnesses to produce, and without which grave interests might be jeopardized, and the *administration of justice thwarted*."

*Wertheim v. Continental R. & Trust Co.*, 15 F. R., 716, 717.

But even so, care must be exercised to avoid "unnecessary and improper inquiry into *private affairs*."

*Robinson v. Phil. & R. R. Co.*, 28 Fed. Rep., 340, 342.

Similarly Congress, when in the exercise of its judicial powers, may itself punish recalcitrant witnesses (*Kilbourn v. Thompson*, 103 U. S., 168), and may also make their contumacy a criminal offense (*In re Chapman*, 166 U. S., 661), because without such power it would be unable to discharge its legitimate functions.

So Congress may competently invest administrative bodies with certain *quasi* judicial powers and invoke the aid of the courts in compelling testimony essential to the due exercise of such powers.

*Interstate Commerce Commission v. Brimson*, 154 U. S., 447.

To this extent qualifications may be imposed and the natural rights of the citizen somewhat abridged without infringing upon constitutional liberty; because on such occasions, there is no *unreasonable* search of private affairs, and the inconvenience put upon the witness is the result of *due process of law*.

But when the individual is dragged from his ordinary occupation and subject to an inquisition looking to the exposure of his own concerns, without *necessity*, and for pure purposes of private or public *convenience*, the search for information, whatever its motive or purpose, becomes *unreasonable*, and the resultant restraint upon the liberty of the citizen can no longer be said to be "due process of law."

Congress having no express power to compel individuals to furnish information which it may regard as needful for the exercise of its legislative functions, is that power conferred by implication by the last clause of section 8 of the constitution, which gives Congress authority "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof" ?

(a)

A law which so directly affects the rights and liberties of the citizen cannot be said to be reasonably necessary for the exercise of the legislative power of Congress, unless it is one which is *absolutely and indispensably essential* to its exercise.

It was not thought to be so during the seventy years which preceded the enactment of the law of 1857. In that period the activities of Congress had never once been interrupted on account of its inability to secure all the enlightenment it needed from outside sources, however weighty the measures it had under consideration. Indeed, so far as the records of Congress disclose, neither of the branches of our national legislature had up to that time suffered the slightest embarrassment on that score. Standing and special committees pursued their labors from session to session, reported, or failed to report, measures, and legislation was enacted in due and regular order without any murmur of complaint because of the refusal of bankers or business men of any class to expose their private business or to betray the confidences of their fellow men. And fifty-seven years have since elapsed, by far the most momentous in our history, with the act of 1857 and its supplemental legislation constantly in force, without, until now, the remotest suggestion that the labors of Congress in that regard have ever been so hampered or impeded.

The explanation is a simple one: Congress can fully discharge its legislative duties without any recourse to the inquisitorial methods to which this appellant was attempted to be subjected. And *this view was clearly and deliberately expressed by this court in the Kilbourn case (Kilbourn v. Thompson, 103 U. S., 168)*, where it was held that neither House of Congress possesses the general power of making inquiry into the private affairs of the citizen. The facts were these:

The firm of Jay Cooke & Co. were debtors of the United States, and it was alleged that they were interested in a 'real estate pool' in the city of Washington, and that the trustee of their estate and effects had made a settlement of their interests with the associates of the firm to the disadvantage and loss of numerous creditors, including the government of the

United States. The House of Representatives, by a resolution reciting these facts, authorized the speaker to appoint a committee of five to inquire into the matter and history of said 'real estate pool,' and the character of the settlement, with the amount of the property involved, in which Jay Cooke & Co. were interested, and the amount paid, or to be paid, in said settlement, with power to send for persons and papers, and report to the house. The committee was appointed and organized, and proceeded to make the inquiry directed. A subpoena was issued to Kilbourn, commanding him to appear before the committee to testify and be examined touching the matters to be inquired into, and to bring with him certain designated records, papers and maps relating to the inquiry. Kilbourn appeared before the committee, and was asked to state the names of the five members of the real-estate pool, and where each resided, and he refused to answer the question, or to produce the books which had been required. The committee reported the matter to the House, and it ordered the speaker to issue his warrant directed to the sergeant-at-arms to arrest Kilbourn, and bring him before the bar of the House to answer why he should not be punished for contempt. On being brought before the House, Kilbourn persisted in his refusal to answer the question, and to produce the books and papers required. He was thereupon held to be in contempt, and committed to the custody of the sergeant-at-arms until he should signify his willingness to appear before the committee and answer the question and obey the *subpœna duces tecum* ; and it was ordered that in the meantime the sergeant-at-arms should cause him to be confined in the common jail of the District of Columbia. He was confined in that jail for forty-five days, when he was released on *habeas corpus* by the chief justice of the Supreme court of the District of Columbia. Upon his release he sued the Speaker of the house, the members of the committee, and the sergeant-at-arms for his forcible arrest and confinement. The defendants pleaded the facts recited, to which plea the plaintiff demurred. The demurrer was overruled and judgment ordered for the defendants. On a writ of error to this court the judgment was affirmed as to all the defendants except the sergeant-at-arms. They, being members of the House, were held to be protected from prosecution for their

action. But, as to Thompson, the judgment was reversed, and the cause remanded for further proceedings.

This court held that the resolution of the House of Representatives showed on its face that the investigation did not have for its object any legislative action, or the impeachment of any federal officer, but the collection of a debt owing to the Government, a power which is vested solely in the courts, that in ordering such an investigation the House of Representatives exceeded the limits of its powers, and that consequently the committee had no authority to require the plaintiff to testify before it. The decision was placed largely on this ground, though, in arriving at this conclusion, Mr. Justice MILLER discussed several other important and interesting points, and among them that now under consideration. He showed that the right of the House to punish a citizen for a contempt of its authority is derived solely from the Federal constitution, and that, while the House has the power to punish for contempt in certain cases in which its functions are judicial, it has no general jurisdiction on the subject. Whether the power to punish recalcitrant witnesses extends beyond the cases in which express power to inquire is given by the constitution, the Court felt it unnecessary to decide, saying (p. 190) :

"The House of Representatives has the sole right to impeach officers of the government, and the Senate to try them. Where the question of such impeachment is before either body acting in its appropriate sphere on that subject, we see no reason to doubt the right to compel the attendance of witnesses, and their answer to proper questions, in the same manner and by the use of the same means that courts of justice can in like cases. Whether the power of punishment in either House by fine or imprisonment goes beyond this or not, we are sure that no person can be punished for contumacy as a witness before either House, unless his testimony is required in a matter into which that House has jurisdiction to inquire, and we feel equally sure that neither of these bodies possess the general power of making inquiry into the private affairs of the citizen."

And again (pp. 194-5) :

"The resolution adopted as a sequence of this preamble contains no hint of any intention of final action by Congress on the subject. In all the argument of the case no sugges-

tion has been made of what the House of Representatives or the Congress could have done in the way of remedying the wrong, or securing the creditors of Jay Cooke & Co., or even the United States. Was it to be simply a fruitless investigation into the personal affairs of individuals? *If so, the House of Representatives had no power or authority in the matter more than any other equal number of gentlemen interested for the government of their country.* By 'fruitless,' we mean that it could result in no valid legislation on the subject to which the inquiry referred."

Although the court *expressly declined to decide* whether the power exists as a necessary incident of legislative power, Mr. Justice MILLER's language in that connection is more than significant. After observing that the power of Congress to punish for contempt could not be supported by the precedents and practices of the English Parliament, nor from the adjudged cases in which the English courts had upheld those practices, he said (p. 189):

"Nor, taking what has fallen from the English Judges, and especially the later cases on which we have just commented, is much aid given to the doctrine, that this power exists as one necessary to enable either House of Congress to exercise successfully their function of legislation. This latter proposition is one which we do not propose to decide in the present case, because we are able to decide it without passing upon the existence or non-existence of such a power in aid of the legislative function."

The Court did, however, *expressly approve the decision of the Privy Council in the case of Kielley v. Carson*, 4 Moore's Privy Council Reports, 63, in which one of the points flatly decided was that the power of a legislature to punish for contempt is *not* one essential to the full discharge of its legislative powers, saying (p. 187):

"Measuring the weight of its authority by the reputation of the judges who sat in the case and agreed to the opinion,\* it would be difficult to find one more entitled on that score to be received as *conclusive* on the points which it decided."

---

\* Lord Chancellor Lyndhurst, Lord Brougham, Lord Denman, Lord Abinger, Lord Cottenham, Lord Campbell, Vice Chancellor Shadwell, the Chief Justice of the Common Pleas, Mr. Justice Erskine, Dr. Lushington and Mr. Baron Parke.

And again (at p. 189) :

"The opinion" (in *Kielley v. Carson*) "also discusses at length the necessity of this power in a legislative body for its protection, and to enable it to discharge its law-making functions, and decides against the proposition."

In referring to the *Kilbourn case* some time later Mr. Justice MILLER said, in his *Lectures on the Constitution* (p. 112) :

"It was held that neither House had any right to organize an investigation into the private affairs of the citizen and that, except in the case in which the Constitution expressly conferred upon the one body or the other the powers which were in their nature somewhat judicial and which required the examination of witnesses, they possess no power to compel by fine or imprisonment, or both, the attendance of such witnesses and answers to interrogatories which did not relate to some question of which it had jurisdiction."\*

The case of *Kielley v. Carson* was an appeal from the Supreme Court of Judicature of Newfoundland. John Kent, one of the members of the House of Assembly of that island, reported to the House that Kielly, the appellant, had been guilty of a contempt of the privileges of the House in using toward him reproaches, in gross and threatening language, for observations made by Kent in the House, adding, "Your privilege shall not protect you." Kielley was brought before the House and added to his offense by boisterous and violent language, and was committed to jail under an order of the House and the warrant of the Speaker. Kielley sued Carson, the Speaker, Kent and other members, and Walsh the messenger, who pleaded the facts above stated and relied on the authority of the House as sufficient protection. The judgment of the Newfoundland Court, which was for the defendants, holding the plea good, was supported in argument before the Privy Council on the ground that the Legislative Assembly of Newfoundland had the same parliamentary rights and privileges which belonged by usage to the

---

\* In commenting upon this case Professor Goodnow says :

"And while the Supreme Court expressly refuses to decide whether Congress had the power to force a witness to testify in cases where it desired information for its use in legislation, it seems to indicate in its opinion that Congress has no such power" (*Comparative Administrative Law*, Vol. 2, 269).

Parliament of England, and that, if this were not so, it was nevertheless a necessary incident to a body exercising legislative functions to punish for contempt of its authority.

The points expressly decided were that the power of committing for a contempt not committed in its presence, was not given the legislative assembly, expressly or by implication, by the commission establishing that body and the instructions which accompanied the commission; that such power is not essentially necessary for the exercise by a local legislature of any of its functions, and was not therefore granted to the Assembly by the act of its establishment, and that the fact that such power belongs to the House of Commons and the English courts of record afforded no authority for holding that it also belonged, as a legal incident, by the common law, to an assembly with analogous functions.

Mr. Baron Parke delivered the judgment, which was concurred in by all the eminent judges who were present at the hearing. He held that, because of the form of the pleas the question whether the House of Assembly could commit by way of imprisonment for a "contempt in the face of it," did not arise in the case. Having shown that "an authority materially interfering with the liberty of the citizen and much liable to abuse" could not be inferred from the "vague and general terms" of the commission and instructions, he continued (p. 88):

"The whole question then is reduced to this—whether by law, the power of committing for a contempt, not in the presence of the Assembly, is incident to every local legislature. The statute law on this subject being silent, the common law is to govern it; and what is common law, depends upon principle and precedent. Their Lordships see no reason to think, that in the principle of the common law, any other powers are given them, than such as are necessary to the existence of such a body, and the proper exercise of the functions which it is intended to execute. These powers are granted by the very act of its establishment, an act which on both sides, it is admitted, it was competent for the Crown to perform. This is the principle which governs all legal incidents. '*Quando lex aliquid concedit, concedere videtur et illud, sine quo res ipsa esse non potest.*' In conformity to this principle we feel no doubt that such an

Assembly has the right of protecting itself from all impediments to the due course of its proceeding. To the full extent of every measure which it may be really necessary to adopt, to secure the free exercise of their Legislative functions, they are justified in acting by the principle of the common law. But the power of punishing anyone for past misconduct as a contempt of its authority, and adjudicating upon the fact of such contempt, and the measure of punishment as a judicial body, irresponsible to the party accused, whatever the real facts may be, is of a very different character, and by no means essentially necessary for the exercise of its functions by a local legislature, whether representative or not. All these functions may be well performed without this extraordinary power, and with the aid of the ordinary tribunals to investigate and punish contemptuous insults and interruptions.

"These powers certainly do not exist in corporate or other bodies, assembled with authority, to make by-laws for the government of particular trades, or united numbers of individuals. The functions of a Colonial legislature are of a higher character, and it is engaged in more important objects; but still there is no reason why it should possess the power in question.

"It is said, however, that this power belongs to the House of Commons in England; and this, it is contended, affords an authority for holding that it belongs as a legal incident, by the common law, to an assembly with analogous functions. But the reason why the House of Commons has this power, is not because it is a representative body with legislative functions, but by virtue of ancient usage and prescription; the *lex et consuetudo Parliamenti*, which forms a part of the common law of the land, and according to which the High Court of Parliament, before its division, and the House of Lords and Commons since, are invested with many peculiar privileges, that of punishing for contempt being one. And besides, this argument from analogy would prove too much, since it would be equally available in favor of the assumption by the Council of the Island, of the power of commitment exercised by the House of Lords, as well as in support of the right of impeachment by the Assembly—a claim for which there is not any color of foundation.

Nor can the power be said to be incident to the Legislative Assembly by analogy to the English Courts of Record which possess it. This Assembly is no court of record, nor has it any judicial functions whatever; and it is to be remarked, that all those bodies which possess the power of adjudication upon, and punishing in a summary manner, contempts of their authority, have judicial functions, and exercise this as incident

to those which they possess, except only the House of Commons, whose authority, in this respect, rests upon ancient usage."

The case of *Kielly v. Carson* was followed by the Supreme Court of Van Dieman's Land in *Fenton v. Hampton*, 11 Moore's Privy Council Rep., 347, decided in 1858, and by the Privy Council in *Doyle v. Falconer*, L. R., 1 Privy Council, 328, decided in 1866.

In *Fenton v. Hampton*, the Comptroller General of convicts in that island, who had been summoned to appear as a witness before a select committee of the Legislative Council appointed to inquire into certain alleged abuses in the Convict Department, having refused to appear, and having subsequently disregarded an order requiring him to attend at the Bar of the Council, was adjudged in contempt and committed by warrant of the Speaker to the custody of the Sergeant-at-Arms, in whose custody he remained until the prorogation of the Council. He then brought an action for assault and false imprisonment against the Speaker and the Sergeant-at-Arms, who pleaded the above facts. The Supreme Court gave judgment in the Comptroller-General's favor, holding the pleas of justification insufficient in law.

The Chief Justice of the Supreme Court stated that the two questions presented were, first, whether the legislative council could commit for contempt a person who had disobeyed their order to appear at their bar, such order having been issued in consequence of the refusal of such person to give evidence before a select committee appointed in accordance with the standing rules and orders of the House, and second, assuming the existence of the authority, whether it had been rightly exercised. He held that an act of Parliament declaring that "all laws and statutes in force within the realm of England be applied in the administration of justice" gave no such express authority to the Council. The next consideration was therefore whether such authority passed "as a legal incident to the powers which were given." As to this he said (pp. 359-60):

"The argument on this point was shaped pretty much as follows:—'The Council is empowered to pass laws; to enable them to do so, it is essential they should inquire; such in-

quiry necessarily demands, in some instances, information from witnesses; such attendance must be compulsorily enforced, to prevent the power of legislation being defeated.' I here observe, that the pleadings in the present instance, show a case of inquiry only and fail to aver that such inquiry was for the purposes of legislation, or even that that end was in contemplation. Although if such were the object, this omission weakens the force of the foregoing argument, I am yet content to take it as it was advanced, and then its validity must depend, as my decision must also depend, upon the application of the legal maxim, '*Quando lex aliquid concedit concedere videtur et illud sine quo res ipsa esse non potest.*' It becomes, therefore, all important to consider the true import of this maxim, and the extent to which it has been applied. After the fullest research which I have been able to bestow, I take the matter to stand thus:—Whenever anything is authorized, and especially if, as matter of duty, required to be done by law, and it is found impossible to do that thing unless something else not authorized in express terms be also done, then that something else will be supplied by necessary intendment. But if, when the maxim comes to be applied *adversely to the liberties or interests of others*, it be found that no such impossibility exists, that the power may be legally exercised without the doing that something else, or even going a step farther, that it is only in some particular instances as opposed to its general operation, that the law fails in its intention, unless the enforcing power be supplied, then, in any such case, the soundest rules of construction point to the exclusion of the maxim, and regard the absence of the power which it would supply by implication as a *casus omissus*."

Having reviewed and commented upon the authorities supporting this position, and noting the absence of any case where the powers of enforcing the attendance of witnesses, or of punishing them for their refusal to attend, had been implied in the absence of express legislation, he proceeded (pp. 364-366):

"Now, if the legal maxim under consideration is to prevail in the case before me, why should not its governing application have been recognized in the several instances to which I have adverted? If it be said that in some, express provision having been made, the necessity for the implied power is superseded, the answer is, that the express provision is made just because the implied power would not be attributed. To confer the incident in terms, where it passes by operation of law, is superfluous and inoperative—a breach of legal rule,

*'Expressio eorum quae tacite insunt nihil operatur.'* If it be said that a different rule ought to prevail in consequence of the higher dignity and importance which attach to legislative bodies, and to the powers and duties entrusted to them, the answer again is, that the question does not hinge upon the constitution of the body, but upon the grant—not on the exalted character of the functions to be performed, but on the extent of the jurisdiction which has been conferred. The more just solution of the problem will be found, as I take it, in this; that in erecting the different statutory bodies, Parliament has assumed that the power to hear and determine, to inquire and report, or to inquire and legislate, will, as a general rule, be effectually carried out, without difficulty and without obstruction; and if in particular instances an impediment should arise from the neglect or contumacy of a witness, it is a safer rule of construction to regard such a *casus omissus*, to be met by other means, than to imply a power of infringing upon the personal liberty of the subject. *'Ad ea quae frequentius accidunt jura adaptantur,'* is equally a maxim of law with that which I am considering; and where the words of the statute do not reach to an inconvenience, rarely happening, they ought not to be extended to it by construction. *Bole v. Morton* (Vaughan's Rep., 373). Now, the work of legislation has hitherto been carried on here readily and without impediment; the information on which it is founded is ordinarily of a public character, obtainable without difficulty; the matter notorious; the members conversant with what is transpiring around them generally inform themselves by the evidence of their senses, or by common report. Let it be conceded that occasions may arise in which inquiry by the examination of witnesses ought to precede legislation; how rarely would it happen that any party required to attend would refuse; but even assuming such refusal, rare indeed would be the case, and such is not shown in this instance, where such party constituted the only fountain from which the required information could be drawn. Taking, however, that extreme and exceptional case, it would still be insufficient to let in the application of the maxim that things necessary pass as incident to the grant, to the extent which has been assumed, or to found the power or privilege which has been here exercised; because as regards the former, the legal power to legislate still exists, although its exercise in the particular instance is impeded; and as regards the latter, because necessity alone, is inadequate to sustain such a power. If the House of Commons claimed a new privilege tomorrow, the exercise of which would invade the right of personal freedom beyond their walls, and the matter came before the Superior Courts in a shape in which they could take cognizance of it, I

apprehend it would not be enough to establish an unanswerable case of simple necessity ; it would be essential to add to that necessity, the evidence of usage. *Burdett v. Abbott* (14 East., 150), *et per* Littledale, and Coleridge, in *Stockdale v. Hansard* (9 Ad. & Ell., 1)."

The Chief Justice found nothing to take the case out of the ruling in *Keilley v. Carson* ; but his associate thought the effect of the Act of Parliament was to introduce so much at least of the *Lex Parliament* as was applicable to the Colony (pp. 378-386).

The case was carried to the Privy Council, where an attempt was made to distinguish the case of *Keilley v. Carson* as a "case of assumed parliamentary privilege, not of the exercise of power incident to legislative action" (pp. 387-89).

The Judicial Committee (Lord Chief Baron POLLOCK delivering the judgment) held that there was no foundation for this distinction and that they were bound by their former decision (pp. 395-97). The Committee did not consider the question of whether or not the Council had the power to make the inquiry out of which the proceedings arose, as one "inherently belonging to their supreme legislative authority," Baron POLLOCK merely observing in that connection that "it sufficiently appeared by the pleas that this was an arrest with a view to punish for an act alleged to be a contempt, but committed away from the House of Assembly" (p. 397).

In *Doyle v. Falconer*, L. R. 1 Privy Council, 328, it was held that the Legislative Assembly of the Island of Dominica, which had no judicial functions, did not possess the power of punishing a contempt, *even though committed in its presence* and by one of its members. The facts were as follows : The respondent, a member of the lower house of the Dominican Assembly, having whilst addressing the House, been called to order by the Speaker and House, retorted by saying to the former, "You are a disgrace to the House." Being called upon to apologize and refusing to do so, he was declared in contempt. While so in contempt, he further interrupted and obstructed the business before the House, whereupon he was committed on the warrant of the Speaker. Having brought an action for assault and false imprisonment against the Speaker and the members of the House, the latter pleaded the above facts in justification.

Demurrers to the pleas were sustained by the Court of Common Pleas of Dominica, and the case was then taken by appeal to the Privy Council.

It was admitted that the case of *Keilly v. Carson* had decided conclusively that the legislative assemblies in the British Colonies had, in the absence of express grant, no power to adjudicate upon or punish for contempts committed beyond their walls ; but counsel for the appellants contended that the Assembly must be held to possess the power to punish for contempt committed in its *presence*, since such a power was indispensable necessary to its existence.

In holding the proposition untenable, the Judicial Committee said (pp. 340-341) :

"It is necessary to distinguish between a power to punish for a contempt, which is a judicial power, and a power to remove any obstruction offered to the deliberations or proper action of a Legislative body during its sitting, which last power is necessary for self-preservation. If a member of a Colonial House of Assembly is guilty of disorderly conduct in the House whilst sitting, he may be removed, or excluded for a time, or even expelled ; but there is a great difference between such powers and the judicial power of inflicting a penal sentence for the offence. The right to remove for self-security is one thing, the right to inflict punishment is another. The former is, in their Lordships' judgment, all that is warranted by the legal maxim that has been cited, but the latter is not its legitimate consequence. To the question, therefore, on which this case depends, their Lordships must answer in the negative. If the good sense and conduct of the members of Colonial Legislatures prove, as in the present case, insufficient to secure order and decency of debate, the law would sanction the use of that degree of force which might be necessary to remove the person offending from the place of meeting and to keep him excluded. The same rule would apply, *a fortiori*, to obstructions caused by any person not a member. And whenever the violation of order amounts to a breach of the peace or other legal offence, recourse may be had to the ordinary tribunals.

"It may be said that the dignity of an Assembly exercising supreme legislative authority in a Colony, however small, and the importance of its functions, require more efficient protection than that which has just been indicated ; that it is unseemly or inconvenient to subject the proceedings of such a body to examination by the local tribunals ; and that it is but reasonable to concede to it

power which belongs to every inferior court of record. On the other hand, it may be urged, with at least equal force, that the power contended for is of a high and peculiar character; that it is in derogation of the liberty of the subject, and carries with it the anomaly of making those who exercise it judges in their own cause, and judges from whom there is no appeal; and that if it may be safely intrusted to magistrates, who would all be personally responsible for any abuse of it to some higher authority, it might be very dangerous in the hands of a body which, from its very constitution, is practically irresponsible.

"Their Lordships, however, are not at liberty to deal with considerations of this kind. There may or may not be good reasons for giving by express grant to such an assembly as this, privileges beyond those which are legally and essentially incident to it. \* \* \* But their Lordships, sitting as a court of justice, have to consider not what privileges the House of Assembly of Dominica ought to have, but what by law it has. In order to establish that the particular power claimed is one of those privileges, the appellants must shew that it is *essential to the existence of the Assembly*, an incident '*sine quo res ipsa esse non potest*.' Their Lordships are of opinion that it is not such an incident."

In *in re Pacific Railway Commission*, 32 Fed. Rep., 241, the Circuit Court for the Northern District of California held (Mr. Justice Field, Sawyer and Sabin, Circuit Judges, concurring) that the Act of March 3, 1887, "authorizing an investigation of the books, accounts and methods of railroads which have received aid from the United States and for other purposes," was unconstitutional in so far as it undertook to empower the commission to investigate the private affairs, books and papers of the officers and employees of corporations indebted to the Government as to their relations to other companies with which they had had dealings, except so far as such officers and employees were willing to submit the same for inspection; and, furthermore, that Congress could not make the courts its instruments in conducting mere legislative investigations. The case arose upon an application of the commission for an order requiring Leland Stanford, the president of the Central Pacific Railroad Company which had received aid in bonds from the Government, to appear before it to answer certain interrogatories propounded to him.

In the statement of facts, which was prepared by Mr. Justice Field, the nature and extent of the authority which

Congress had attempted to confer on the commission were thus pointed out (pp. 242-3) :

" That act authorizes the president to appoint three commissioners to examine the books, papers and methods of all railroad companies which have received aid in bonds from the government, and in terms invests them with power to make a searching investigation into the working and financial management, business and affairs of the aided companies ; and also to ascertain and report ' whether any of the directors, officers or employees of said companies, respectively, have been, or are now, directly or indirectly, interested, and to what amount or extent, in any other railroad, steamship, telegraph, express, mining, construction, or other business company or corporation, and with which any agreements, undertakings, or leases have been made or entered into ; what amounts of money or credit have been loaned by any of said companies to any person or corporation ; what amounts of money or credit have been or are now borrowed by any of said companies, giving names of lenders and the purposes for which said sums have been or are now required ; what amounts of money or other valuable consideration, such as stocks, bonds, passes, and so forth, have been expended or paid out by said companies, whether for lawful or unlawful purposes, but for which sufficient and detailed vouchers have not been given or filed with the records of said company ; and further, to inquire and report whether said companies, or either of them, or their officers or agents, have paid any money or other valuable consideration, or done any other act or thing, for the purpose of influencing legislation."

" It is difficult to express in general terms," he said, " the extent to which the commissioners are required to go in their inquisition into the business and affairs of the aided companies, or the extent to which they may not go into other business and affairs of its directors, officers and employees. The act itself must be read to form any conception of the *all-pervading character of the scrutiny* it exacts of them. And it provides that the commissioners, or either of them, shall have the power 'to require the attendance and testimony of witnesses, and the production of all books, papers, contracts, agreements and documents relating to the matter under investigation, and to administer oaths ; and to that end may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses, and the production of books, papers and documents.' And it declares that 'any of the circuit or district courts of the United States within the jurisdiction of which such inquiry is carried on, may, in case of contumacy or refusal to obey a subpoena issued to any person, issue an order

requiring any such person to appear before said commissioners, or either of them, as the case may be, and produce books and papers, if so ordered, and give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.' And also that 'the claim that any such testimony or evidence may tend to criminate the person giving such evidence, shall not excuse such witness from testifying, but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.'"

It appears that while the witness was under examination respecting the affairs of the Central Pacific Railroad Company, vouchers were produced and verified representing moneys of the Company aggregating \$733,725.62, which had been expended by the witness and by him charged to the Company, and by the Company subsequently reimbursed to him. The objects to which these moneys had been applied did not appear on the face of the vouchers, except that they were stated to have been for "general expense account" or for "legal services", and except, also, that in a few instances the initials of persons to whom the money purported to have been paid were given. The questions which the witness refused to answer sought to elicit the circumstances of these expenditures, and particularly whether any of the moneys had been used for the purpose of influencing legislation. An order having been entered on the petition of the commissioners requiring the witness to show cause why he should not be compelled to answer the interrogatories of the Commission, he filed an answer in which he set forth, among other things,

"that by the decision of the Supreme Court the relation between the United States and the railroad company is that of creditor and debtor, and that the rights of both are those springing from that relation; that the examination made by the commission has not only extended to the affairs of the Central Pacific Railroad Company, but has extended to a searching investigation of the affairs of all the consolidated and allied companies connected with that corporation; and that their affairs have been examined into, not only by the experts of the commission, but the commissioners themselves, and their business relations have been exposed to the public and the prying curiosity of rival business competitors; and that the commission insists upon investigating matters with which the govern-

ment has and can have no possible concern ; that the disposition the company may have made of such portion of its assets or earnings as the government has not and never had any interest in is of this character ; and yet the commission insists upon answers to questions respecting such disposition which can have no possible effect upon the relations between the company and the government, and can only tend to cast suspicion upon parties whose names may be mentioned ; and as the subjects in respect to which these questions are propounded are of an exclusively private character, in no way effecting the interests of the government, neither the company nor its officers feel called upon to answer."

The respondent also made, Mr. Justice Field said, the "extraordinary statement" that he was constrained to this course

"as the gentlemen of the commission have distinctly and repeatedly avowed, in the course of their examination, that they do not regard themselves bound in such examination by the ordinary rules of evidence ; that they would receive hearsay and *ex parte* statements, surmises suspicious, and all character of information that might be called to their attention."

The respondent denied that he had ever corrupted, or attempted to corrupt, any member of the legislature, or any member of congress, or any public official, or had ever authorized any agent to do so ; and averred that all the claims covered by the vouchers had received, not only the approval of the board of directors of the Central Pacific Railroad Company, but likewise the approval of the stockholders of that company ; that all parties who could in any wise legally or equitably be affected by the disbursements embraced in them were fully satisfied therewith, and had ratified and approved of the same.

In addition, he stated that in the conduct and management of a business of the magnitude of the Central Pacific Railroad Company, and the various corporations consolidated and allied therewith, it was impossible not, from time to time, to have to do business involving disbursements which every dictate of business prudence would not admit of being made public ; that arrangements of a private character, names of parties not publicly known, and the disclosures of which could only result in defeating the ends in view, and exposing the persons so named to suspicion and obloquy, would forbid

making the same public, either upon the archives of the company, or before a public commission ; that that course of policy was not only sanctioned by ordinary experience in business life, but that the government of the United States and that of the State of California, as well as the government of the city and county of San Francisco, severally, allowed to their chief magistrates money, the investment of which was committed exclusively to their judgment and discretion, and for which detailed vouchers were never required.

He added that the commission deemed it its duty to propound questions involving criminality on his part, and on the part of the persons whose names were mentioned in such questions, answers to which, for the reasons stated, he had felt constrained to decline to make ; that, acting not only on his own behalf, but on behalf of those whose interests as stockholders of the Central Pacific Railroad Company were committed to his charge, he felt bound to decline to answer them unless he was otherwise directed by the court.

The purport of the answer was that the government had no legal interest in the matters in relation to which the interrogatories were propounded ; that he had answered them so far as it was in his power to do so, and that he was shielded by the constitution from answering questions implying criminality in his conduct, and calculated to cast aspersions upon others.

The court denied the application. Mr. Justice Field pointed out that the commission was not a judicial body, and possessed no judicial power under the act creating it, and that it could determine no rights of the government or of the corporations whose affairs it was appointed to investigate. After showing that such an investigation as that directed by the Act of 1887 was to be distinguished from the inquiries authorized upon taking the census, he continued (pp. 250-1) :

" It (Congress) may inquire into the extent of the productions of the country of every kind, natural and artificial, and seek information as to the habits, business and even amusements of the people. But in its inquiries it is controlled by the same guards against the invasion of private rights which limit the investigations of private parties into similar matters. In the pursuit of knowledge it cannot compel the production of the private books and papers of the citizen

for its inspection, except in the progress of judicial proceedings, or in suits instituted for that purpose, and in both cases only upon averments that its rights are in some way dependent for enforcement upon the evidence those books and papers contain. Of all the rights of the citizen, few are of greater importance or more essential to his peace and happiness than the right of personal security, and that involves not merely protection of his person from assault, but exemption of his private affairs, books, and papers from the inspection and scrutiny of others. Without the enjoyment of this right, all other rights would lose half their value. The law provides for the compulsory production, in the progress of judicial proceedings, or by direct suit for that purpose, of such documents as affect the interest of others, and also, in certain cases, for the seizure of criminating papers necessary for the prosecution of offenders against public justice, and only in one of these ways can they be obtained, and their contents made known, against the will of the owners.

\* \* \* \* \*

"In his opinion in the celebrated case of *Entick vs. Carrington*, reported at length in 19 How. State Tr. 1029, Lord CAMDEN said: 'Papers are the owner's goods and chattels; they are his dearest property, and are so far from enduring a seizure that they will hardly bear an inspection; and though the eye cannot, by the laws of England, be guilty of a trespass, yet, where papers are removed and carried away, the secret nature of those goods will be an aggravation of the trespass, and demand more considerable damages in that respect. Where is the written law that gives any magistrate such a power? I can safely answer there is none; and therefore it is too much for us, without such authority, to pronounce a practice legal which would be subversive of all the comforts of society.' Compulsory process to produce such papers, not in a judicial proceeding, but before a commissioner of inquiry, is as subversive of 'all the comforts of society' as their seizure under the general warrant condemned in that case. The principles laid down in the opinion of Lord CAMDEN, said the supreme court of the United States, 'affect the very essence of constitutional liberty and security. They reach further than the concrete form of the case then before the court with its adventitious circumstances; they apply to all invasions on the part of the government, and its employes, of the sanctity of man's home and the privacies of life.'"

In holding that the act conferred no power upon the commission to inquire into the private affairs of witnesses beyond

what the latter might voluntarily disclose, Mr. Justice Field said (pp. 253-4) :

" The act of congress not only authorizes a searching investigation into the methods, affairs and business of the Central Pacific Railroad Company, but it makes it the duty of the railway commission to inquire into, ascertain and report whether any of the directors, officers or employes of that company have been, or are now, directly or indirectly, interested, and to what extent, in any railroad, steam-ship, telegraph, express, mining, construction, or other business company or corporation, and with which any agreements, undertakings or leases have been made or entered into. There are over 100 officers, principal and minor, of the Central Pacific Railroad Company and nearly 5,000 employes. It is not unreasonable to suppose that a large portion of these have some interest, as stockholders or otherwise, in some other company or corporation with which the railway company may have an agreement of some kind, and it would be difficult to state the extent to which the explorations of the commission into the private affairs of these persons may not go if the mandate of the act could be fully carried out. But in accordance with the principles declared in the case of *Kilbourn v. Thompson*, and the equally important doctrines announced in *Boyd v. U. S.*, the commission is limited in its inquiries as to the interest of these directors, officers, and employes in any other business company, or corporation to such matters as these persons may choose to disclose. They cannot be compelled to open their books, and expose such other business to the inspection and examination of the commission. They were not prohibited from engaging in any other lawful business because of their interest in and connection with the Central Pacific Railroad Company, and that other business might as well be the construction and management of other railroads as the planting of vines, or the raising of fruit, in which some of those directors and officers and employes have been in fact engaged. And they are entitled to the same protection and exemption from inquisitorial investigation into such business as any other citizens engaged in like business."

Judge Sawyer said (p. 263) :

" A general, roving, offensive, inquisitorial, compulsory investigation, conducted by a commission, without any allegations, upon no fixed principles, and governed by no rules of law, or of evidence, and no restrictions except its own will, or caprice, is unknown to our constitution and laws ; and such an inquisition would be destructive of the rights of the citizen, and an intolerable tyranny. Let the power once be estab-

lished, and there is no knowing, where the practice under it would end."

Judge Sabin, after noting the admission of the commissioners that the account in reference to which many of the questions had been propounded had long before been fully adjusted between the government and the company, said (p. 269) :

" If this be true, what interest, then, is it to the United States, even if it had a right so to do, to inquire how, or in what manner this account accrued or was paid ? It concerns the United States in no manner—affects no pecuniary right or interest claimed by it, due or not matured. What interest, then, has the United States in this inquiry beyond that of any third party whose curiosity might prompt him to inquire into that concerning which he has no right or interest ? Is not this, then, a mere idle inquiry, not made in the interest of, or to preserve or establish the rights of, the government or any person ? Has not any third person, to gratify an idle curiosity, the same right to institute these inquiries, and invoke the aid of the courts in support thereof ? Courts do not entertain such investigations or inquiries, or lend their aid thereto. If this power of unlimited, inquisitorial investigation into the affairs of private corporations or companies, or of individuals—and it concerns all alike—shall be once established, who can say where it will end, or what will be its limit of injustice at all times, but more especially when called into exercise in times of political excitement, or under the influence of *partisan zeal* or passion ? In the close adherence to well-settled principles of law, founded upon the just observance of the rights of all parties, will we not find the greatest safety alike to public and private rights ? "

In *Interstate Commerce Commission v. Brimson*, 154 U. S., 447 (1894), it was held, among other things, that the twelfth section of the Interstate Commerce Act authorizing the Circuit Courts of the United States to use their process in aid of legitimate inquiries before the Commission was not in conflict with the constitution as imposing on judicial tribunals duties not judicial in their nature, and that a petition filed as the basis of a proceeding to compel a witness to produce books and papers relating to the matter under investigation by the Commission made a case or controversy to which the judicial power of the United States extended. But it was also held

that the power to regulate commerce did not carry with it authority to destroy or impair those fundamental guarantees of personal rights which are recognized by the constitution as inhering in the freedom of the citizen. And it was *plainly intimated that Congress itself had no such unlimited power* to inquire into the private affairs of individuals as that which it is here claimed was conferred by the House of Representatives on the Committee to whose demands the appellant refused to comply. The court said (pp. 478-9) :

"In accomplishing the objects of a power granted to it Congress may employ any or all of the modes that are appropriate to the end in view, taking care only that no mode employed is inconsistent with the limitations of the constitution. We do not overlook these constitutional limitations, which, for the protection of personal rights, must necessarily attend all investigations conducted under the authority of Congress. Neither branch of the legislative department, still less any merely administrative body, established by Congress, possesses or can be invested with, a general power of making inquiry into the private affairs of the citizen. *Kilbourn v. Thompson*, 103 U. S., 168, 190. We said in *Boyd v. United States*, 116 U. S., 616, 630—and it cannot be too often repeated—that the principles that embody the essence of constitutional liberty and security forbid all invasions on the part of the government and its employees of the sanctity of a man's home, and the privacies of his life. As said by Mr. Justice FIELD in *In re Pacific Railway Commission*, 32 Fed. Rep., 241, 250, 'of all the rights of the citizen, few are of greater importance or more essential to his peace and happiness than the right of personal security, and that involves, not merely protection of his person from assault, but exemption of his private affairs, books, and papers from the inspection and scrutiny of others. Without the enjoyment of this right, all others would lose half their value.'

"It was said in argument that the twelfth section was in derogation of those fundamental guarantees of personal rights that are recognized by the Constitution as inhering in the freedom of the citizen. It is scarcely necessary to say that the power given to Congress to regulate interstate commerce does not carry with it any power to destroy or impair those guarantees. This court has already spoken fully upon that general subject in *Counselman v. Hitchcock*, 142 U. S., 547. We need not add anything to what has been there said. Suffice it in the present case to say that as the Interstate Commerce Commission, by petition in a Circuit Court of the United States, seeks, upon grounds distinctly set forth, an order to compel appellees to answer particular questions and

to produce certain books, papers, etc., in their possession, it was open to each of them to contend before that court that he was protected by the Constitution from making answer to the questions propounded to him; or that he was not legally bound to produce the books, papers, etc., ordered to be produced; or that neither the questions propounded nor the books, papers, etc., called for relate to the particular matter under investigation, nor to any matter which the Commission is entitled under the Constitution or laws to investigate. These issues being determined in their favor by the court below, the petition of the Commission could have been dismissed upon its merits."

In the case just cited, although the question was not before the court—the investigation which the Commission was there conducting being based on an informal complaint—Mr. Justice Harlan expressed the view (154 U. S., at p. 447) that the power to compel information was essential to the full performance of its duty to recommend legislation.

This idea was, however, emphatically repudiated in *Harri-man v. Interstate Commerce Commission*, 211 U. S., 407, where it was held, that notwithstanding the broad and sweeping language of the statute creating the commission, and its amendatory acts, the power of the Commission to require testimony was limited to investigations concerning a *specific breach of existing law*. Mr. Justice Holmes, in delivering the opinion of the Court, said (pp. 417-20):

"Before taking up the words of the statute the enormous scope of the power asserted for the commission should be emphasized and dwelt upon. The legislation that the commission may recommend embraces, according to the arguments before us, anything and everything that may be conceived to be within the power of Congress to regulate, if it relates to commerce with foreign nations or among the several States. And the result of the arguments is that whatever might influence the mind of the commission in its recommendations is a subject upon which it may summon witnesses before it and require them to disclose any facts, no matter how private, no matter what their tendency to disgrace the person whose attendance has been compelled. If we qualify the statement and say only, legitimately influence the mind of the commission in the opinion of the court called in aid, still it will be seen that the power, if it exists, is unparalleled in its vague extent. Its territorial sweep also should be noticed. By Sec. 12 of the act of 1887, the commission has authority to

require the attendance of witnesses 'from any place in the United States, at any designated place of hearing.' No such unlimited command over the liberty of all citizens ever was given, so far as we know, in constitutional times, to any commission or court.

"How far Congress could legislate on the subject-matter of the questions put to the witnesses was one of the subjects of discussion, but we pass it by. *Whether Congress itself has the unlimited power claimed by the commission, we also leave on one side.* It was intimated that there was a limit in *Interstate Commerce Commission v. Brimson*, 154 U. S., 447, 478, 479. Whether it could delegate the power, if it possesses it, we also leave untouched, beyond remarking that so unqualified a delegation would present the constitutional difficulty in most acute form. It is enough for us to say that we find no attempt to make such a delegation anywhere in the act.

\* \* \* \* \*

The commission it will be seen is given power to require the testimony of witnesses 'for the purposes of this Act.' The argument for the commission is that the purposes of the act embrace all the duties that the act imposes and the powers that it gives the commission; that one of the purposes is that the commission shall keep itself informed as to the manner and method in which the business of the carriers is conducted, as required by § 12; that another is that it shall recommend additional legislation under § 21, to which we shall refer again, and that for either of these general objects it may call on the courts to require any one whom it may point out to attend and testify if he would avoid the penalties for contempt. We are of opinion, on the contrary, that the purposes of the act for which the commission may exact evidence embrace only complaints for violation of the act, and investigations by the commission upon matters that might have been made the object of complaint. As we already have implied, the main purpose of the act was to regulate the interstate business of carriers, and the secondary purpose, that for which the commission was established, was to enforce the regulations enacted. These, in our opinion, are the purposes referred to; in other words, the power to require testimony is limited, as it usually is in English-speaking countries at least, to the only cases *where the sacrifice of privacy is necessary*—those where the investigations concern a specific breach of the law."

Further (p. 421) :

"If by virtue of § 21 the power exists to summon witnesses for the purpose of recommending legislation, we hardly see why, under the same section, it should not extend to summoning them for the still vaguer reason that their testi-

mony might furnish data considered by the commission of value in the determination of questions connected with the regulation of commerce. If we did not think, as we do, that the act clearly showed that the power to compel the attendance of witnesses was to be exercised only in connection with the *quasi-judicial* duties of the commission, we still should be unable to suppose that such an *unprecedented grant* was to be drawn from the counsels of perfection that have been quoted from §§ 12 and 21. We could not believe on the strength of other than explicit and unmistakable words that such *auto-cratie power* was given for any less specific object of inquiry than a breach of existing law, in which, and in which alone, as we have said, there is any need that *personal matters* should be revealed."

All that was decided in the *Chapman case* (166 U. S., 661) was that section 102, when reasonably construed, was not open to constitutional objections. In that case it was held to apply to an investigation by a committee of the Senate, under a resolution directing them to inquire "whether any senator has been, or is, speculating in what is known as sugar stocks during the consideration of the tariff bill now before the Senate," and that questions propounded to a witness, who was a member of a brokerage firm, by which it was sought to elicit whether his firm had been employed by any senator to buy or sell sugar stocks were pertinent to the subject matter of the inquiry. Answering the objection that these questions amounted to an unreasonable search into the witness's private affairs, the Court said (pp. 668-9) :

"According to the preamble and resolutions, the integrity and purity of members of the Senate had been questioned in a manner calculated to destroy public confidence in the body, and in such respects as might subject members to censure or expulsion. The Senate, by the action taken, signifying its judgment that it was called upon to vindicate itself from aspersion and to deal with such of its members as might have been guilty of misbehavior and brought reproach upon it, obviously had jurisdiction of the subject matter of the inquiry it directed, and power to compel the attendance of witnesses, and to require them to answer any question pertinent thereto. And the pursuit of such inquiry by the questions propounded in this instance was not, in our judgment, in violation of the security against unreasonable searches and seizures protected by the Fourth Amendment. In *Kilbourn v. Thompson*, 103 U. S., 168, among other important rulings, it was held

that there existed no general power in Congress or in either House to make inquiry into the private affairs of a citizen; that neither House could, on the allegation that an insolvent debtor of the United States was interested in a private business partnership, investigate the affairs of that partnership, as a mere matter of private concern; and that consequently there was no authority in either House to compel a witness to testify on the subject. The case at bar is wholly different. *Specific charges publicly made against Senators had been brought to the attention of the Senate, and the Senate had determined that investigation was necessary.* The subject-matter as affecting the Senate was within the jurisdiction of the Senate. The questions were not intrusions into the affairs of the citizen; they did not seek to ascertain any facts as to the conduct, methods, extent or details of the business of the firm in question, but only whether that firm, confessedly engaged in buying and selling stocks, and the particular stock named, was employed by any Senator to buy or sell for him any of that stock, whose market price might be affected by the Senate's action. We cannot regard these questions as amounting to an unreasonable search into the private affairs of the witness simply because he may have been in some degree connected with the alleged transactions, and as investigations of this sort are within the power of either of the two Houses they cannot be defeated on purely sentimental grounds. The questions were undoubtedly pertinent to the subject-matter of the inquiry. The resolutions directed the committee to inquire 'whether any Senator has been, or is speculating in what are known as sugar stocks during the consideration of the tariff bill now before the Senate.' What the Senate might or might not do upon the facts when ascertained, we cannot say, nor are we called upon to inquire whether such ventures might be defensible, as contended in argument, but it is plain that negative answers would have cleared that body of what the Senate regarded as offensive imputations, while affirmative answers might have led to further action on the part of the Senate within its constitutional powers."

(b)

The decisions holding that state legislatures possess the authority to compel information in aid of legislation proceed upon the mistaken assumption of the *necessity* of the power.

*Burnham v. Morrissey*, 14 Gray, 226, 239.

*In re Falvey*, 7 Wis., 630, 637.

*People ex rel. McDonald v. Keeler*, 99 N. Y., 463, 482.

If the necessity could be made out, no more need be said. But, as we have seen, the supposed necessity, when we examine it, dwindles down to a very dubious kind of expediency.

The decisions of the state courts, furthermore, adopt the doctrine which can, of course, have no possible application to the Congress of the United States, that a legislature is the "grand inquest" of the state.

Without pointing out many obvious reasons why those decisions should have no weight in determining the question here under consideration, it should be enough to say that they are wholly irreconcilable with the decision of the Privy Council in *Keilley v. Carson*, which this Court has treated as "*conclusive on the points which it decided*" (103 U. S., 187).

(c)

Congress has not always supposed itself possessed of the power now asserted by the House of Representatives. In 1827 the Committee on Manufactures of the House, which at this period sometimes reported revenue bills, having submitted a resolution, by which it was proposed that the Committee "be vested with power and authority to send for persons and papers," an amendment was offered striking out the words "vested with power to send for persons and papers," and inserting: "empowered to send for and to examine persons, on oath, concerning the present condition of our manufactures, and to report the minutes of such examination to this House."

*Hinds' Precedents*, Vol. III., sec. 1816, pp. 141-2.

It appears from the debate that this amendment was "intended to authorize the committee to send for and examine witnesses, *but not to compel their attendance against their will*" (p. 142).

It was stated in favor of the proposition "that the committee, in framing the tariff bill, found many conflicting memorials before them, and that the truth could be arrived at best by oral testimony. This course had been pursued by the House of Commons. The power asked for could not be considered dangerous, for the subject deeply affected the interests

of the people, and it was proposed merely to compel the attendance of witnesses, a power exercised in the most insignificant cases of litigation between persons. The *viva voce* examination was much more satisfactory than the written memorials. The *common law of Parliament* should dictate that the legislature must possess the power requisite to procure the information needed in order to act understandingly. Committees of investigation enjoyed the powers. Indeed, it seemed true that committees already had the power to examine under oath, the statutes conferring on the chairman the power to administer oaths."

*Id.*, p. 141.

In opposition, it was argued that "no one could cite a case in the House of Representatives where a demand for like powers had been made by a committee whose duties were similar to those of the Committee on Manufactures. The power to send for persons and papers had hitherto been exercised by committees having *judicial* functions and exercising the judicial power of the House. To send the Sergeant-at-Arms to all parts of the country to compel citizens to attend and testify on a tariff matter would be an extraordinary exercise of a power hitherto used only in cases of contested elections and impeachments. The powers of the House of Representatives could not be compared with those of the House of Commons, since the latter was restrained by no written constitution. *And it had not been made plain that the House of Commons had ever issued a compulsory process in such a case.*"

*Id.*, pp. 141-142.

The amendment was agreed to, 100 ayes to 78 noes, and the resolution as amended was then passed, yeas 102, noes 88.

Ten years later a special committee of the House distinctly disclaimed any pretense of authority to compel the production of private papers or to examine into private transactions. In January, 1837, a committee was appointed "to inquire whether the several banks employed for the deposit of the public money have all, or any of them, by joint or several contract, employed an agent to reside at the seat of government to transact their business with the Treasury Department, what is the character of the business which he is so employed to transact, and what compensation he receives; whether such

agent, if there be one, has been employed at the request or through the procurement of the Treasury Department ; whether the business of the Treasury Department with said banks is conducted through said agent ; and whether in the transaction of any business confided to said agent, he receives any compensation from the Treasury Department ; and that said committee have power to send for persons and papers."

One Whitney, whom from the terms of the omnibus subpoena which was served on him the committee plainly *knew* to be the agent so employed (just as the "Money Trust" committee must have known the details of the syndicate operators regarding which they questioned the appellant ; see documents produced under this subpoena, Record, pp. 33-39, 71, 72), appeared before the committee, but declined to answer certain questions and to produce certain papers.

In a written protest he pointed out that the inquiry had two branches—first, as to whether he had been employed as agent of the banks through the procurement of the Treasury Department and had received compensation from that department ; and, second, as to his business arrangements with the deposit banks.

As to the first branch, he said he had answered all questions and still held himself ready to answer all such ; but the questions falling under the second branch he had not answered, on the ground that they were inquisitorial in their nature, going into personal and *private transactions and relations between himself and his employers*. With reference to the power of Congress to compel the production of evidence he said :

"If the power to send for 'papers,' which may be rightfully delegated to and exercised by a committee of Congress, be susceptible of any more reasonable limits than that of the power to send for 'persons,' I am advised that it may be clearly reduced to two simple heads :

"1. All that can be denominated public papers, as belonging to the public archives of any Department of the Government, and which may be required for the information of Congress upon any matter touching the public administration.

"2. Such private papers in the hands of individuals as are necessary to the advancement of justice in the exercise of the *judicative power* of Congress, understanding that power as limited to impeachments. Then such private papers, and such only, are included as would, if produced, be competent evidence in a criminal prosecution, and in a prosecution not against the party cited to produce the papers."

The committee did not attempt to compel the witness to answer questions which he considered inquisitorial, but filed a report, in which they made this meek response to Whitney's protest:

"As relates to the resolution of the committee, the whole argument of the protest is based upon the idea that the committee has asserted a claim of power, in compelling the production of private papers and in examining into private transactions, which it has not done. The resolution is general, and calls for no specific paper; its calls generally for such papers, etc., as may refer to and shed light upon the inquiries directed by the House. The committee, in adopting this resolution, made it general, because they had no knowledge of the peculiar character of the papers held by the witness, whether they were of a purely private or public character, and could not, therefore, designate any particular paper for which to make a call, and because they thought it due to the witness himself that he might have the opportunity of producing such papers of a private character as he might deem necessary for the purpose of explanation if such explanation should be deemed necessary by him. \* \* \*

The committee has not in a single instance attempted to enforce the production of any paper objected to by the witness. \* \* \*

*The committee does not claim for the House or itself the power to compel the deposit banks to expose their private concerns or private transactions to the scrutiny of the committee, nor has the committee in any instance demanded such exposure. Yet, while the committee does not assert any such claim of power, it holds it decidedly within the power of Congress to ascertain, by other competent and legal testimony, any of the transactions of the deposit banks which are calculated to affect the safety of the public funds, and to render some action on the part of Congress necessary for their security."*

*Hinds' Precedents, Vol. III., pp. 95-6.*

So far as we can learn, the Senate did not assert the power to compel testimony in aid of legislation until 1860, and then on an occasion and under conditions which entitle its action to little respect as a precedent, for it was one of the series of outrages committed by the sectional party then dominant in both houses of Congress which precipitated the war between the North and the South. John Brown's raid at Harper's Ferry having been seized upon as a pretext by the pro-slavery leaders for the charge that Brown was an emissary of the Abolitionists, a Senate committee was appointed, with James

M. Mason, the author of the Fugitive Slave Law, as its chairman, to investigate the facts attending the raid, ostensibly for the purpose of framing legislation, but in reality in an attempt to implicate leaders of the Republican party and the inhabitants of the free-labor states, generally, in a scheme for liberating the slaves. In the course of the debate which preceded the passage of the resolution, Charles Sumner delivered a masterly address in which he pointed out the absence of power in the Senate to enter upon the proposed inquiry. But it was easier to outvote Sumner's arguments than to answer them, and the resolution was carried. Subsequently, in the course of a report of the Committee on the Judiciary concerning the sufficiency of a warrant for the arrest of Thaddeus Hyatt, who had disregarded the summons of the investigating Committee, the assumption was made that the Senate had the power. Hyatt was committed for contempt and confined in the common jail of the District of Columbia for several months. When, at the end of that time, his release was moved, Sumner said :

" Mr. President, I welcome with pleasure the proposition for the discharge of Mr. Hyatt from his long incarceration in the filthy jail where he has been detained by the order of the Senate, but I am unwilling that this act of justice should be done to a much injured citizen without for one moment exposing the injustice which he has received at your hands.

\* \* \* \* \*

The present inquiry is neither preliminary to an impeachment nor on the trial of an impeachment. It has no such element to sustain it. It is precisely the same as if an inquiry should be instituted into the murder of Dr. Burdell in New York, or into the burning of slaves in Alabama, or into the banks of New York \* \* \* with regard to all of which the Senate has no judicial power. \* \* \* I know it is said that this power is necessary in aid of legislation. I deny the necessity. *Convenient* at times it may be ; but *necessary*, never. We do not drag the members of the cabinet or the President to testify before a committee in aid of legislation ; but I say, without hesitation, they can claim no immunity which does not belong equally to the humblest citizen. Mr. Hyatt and Mr. Sanborn have rights as ample as if they were office holders. Such a power as this which, without the sanction of law, and merely at the will of a partisan majority, may be employed to ransack the most distant states, and to drag citizens before the Senate all the way from Wisconsin or from South

Carolina may be convenient, and to certain persons may seem to be necessary. \* \* \* Let me be understood as admitting the power of the Senate where it is essential to its own protection or the protection of its privileges, but not where it is required merely in aid of legislation. *The difference is world-wide between what is required for protection and what is required merely for aid.* \* \* \* With these remarks, I quit this question, anxious only that the recent usurpation of the Senate may not be drawn into a precedent hereafter."

Smith's Digest of Decisions and Precedents (Senate Doc. No. 278; 53rd Cong., 2nd Sess.), p. 293-4.

(d)

The fact that in recent years it has been the habit or practice of Congress to clothe its investigating committee with apparent authority to coerce information in the pursuit of knowledge is the very weakest evidence of its constitutional power to do so.

In *Stockdale v. Hansard*, 9 Ad. & E. 1, a plea to the declaration justified the libel under an order of the House of Commons, and set forth a resolution that the power of publishing its proceedings was an essential incident to the functions of Parliament. The Court of Queens Bench (Lord Denman, C. J., Littledale, J., Patterson, J., and Coleridge, J.), held that it was competent for the court to inquire whether the privilege so asserted existed or not, and decided that it did not. In answer to the contention that the proof of the supposed privilege rested, among other things, on practice and universal acquiescence, Lord DENMAN said (p. 155):

"The practice of a ruling power in the state is but a feeble proof of its legality. I know not how long the practice of raising ship-money had prevailed before the right was denied by Hampden; \* general warrants had been issued and enforced for centuries, before they were questioned in actions

---

\* "Had Mr. Hampden reasoned and acted like the moderate men of these days, instead of hazarding his whole fortune in a law suit with the crown, he would have quietly paid the twenty shillings demanded of him, the Stuart family would probably have continued upon the throne, and at this moment the imposition of ship-money would have been an acknowledged prerogative of the crown." Junius, Letter XXXIX., May 28, 1770.

by Wilkes and his associates, who, by bringing them to the test of law, procured their condemnation and abandonment. I apprehend that acquiescence on this subject proves, in the first place, too much; for the admitted and grossest abuses of privilege have never been questioned by suits in Westminster Hall. The most obvious reason is, that none could have commenced a suit of any kind for the purpose, without incurring the displeasure of the offended house, instantly enforced, if it happened to be sitting, and visiting all who had been concerned. During the session, it must be remembered that privilege is more formidable than prerogative, which must avenge itself by indictment or information, involving the tedious process of law, while privilege, with one voice, accuses, condemns, and executes, and the order to 'Take him,' addressed to the Sergeant-at-Arms, may condemn the offenders to persecution and ruin. Who can wonder that early acquiescence was deemed the lesser evil, or gravely argue that it evinced a general persuasion that the privilege existed in point of law?"

It would be a curious result of the struggle of eight centuries to erect a constitutional and representative government should it now come to pass that the citizen must elect to go to prison or sacrifice the privacy of his personal affairs. This right is forfeited only in a few cases and those upon the ground of necessity; never upon the ground of mere convenience to the legislative body.

"Doubtless," says Blackstone, "all arbitrary measures well executed are the most convenient, but mere convenience is not a proper reason under a free government for the assumption of powers not granted, and this is especially the case where the powers are arbitrary and despotic and touch the liberty of the citizen" (4 Commentaries, 350).

Surely a power so dangerous to the fundamental and most intimate rights of the citizen could not be justified except upon indisputable authority and because of the clearest necessity. It is a menace to private right, possibly disguised, but insidious and progressive. It should be viewed with the admonition of Mr. Justice BRADLEY (*Boyd v. United States*, 116 U. S., 616, 635):

"It may be that it is the obnoxious thing in its mildest and least repulsive form; but illegitimate and unconstitutional practices get their first footing in that way, namely, by silent

approaches and slight deviations from legal modes of procedure. This can only be obviated by adhering to the rule that constitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right, as if it consisted more in sound than in substance. It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon. Their motto should be *obsta principiis*."

THIRD. THE APPELLANT WAS ENTITLED TO REFUSE TO ANSWER BECAUSE THE QUESTIONS ASKED OF HIM WERE NOT "PERTINENT TO THE QUESTION UNDER INQUIRY."

In the *Harriman* case, 211 U. S., 407 (*ante*, p. 74), this court rejected the claim asserted by the Interstate Commerce Commission of authority under the statute of its creation to require a witness to disclose any facts, no matter how private, which might influence the mind of the Commission in its recommendations to Congress on the subject of legislation. Mr. Justice HOLMES observed (p. 417): "If we qualify the statement and say only, *legitimately* influence the mind of the Commission in the opinion of the Court called in aid, still it will be seen that the power, if it exists, is unparalleled in its vague extent. \* \* \* No such unlimited command over the liberty of all citizens was ever given, so far as we know, in constitutional times to any commission or court." Whether *Congress itself* possessed the unlimited powers claimed by the commission, and "*whether it could delegate the power*, if it possesses it," the court left undecided, "beyond remarking that so unqualified a delegation would prevent the constitutional difficulty in *most acute form*."

The statute upon which the present prosecution rests assumes the existence of power in Congress, and the right to delegate it to a committee of one house, of infinitely greater extent than that asserted by the Interstate Commerce Commission. If, notwithstanding this, the statute is unobjectionable on constitutional grounds and a Congressional Committee engaged in the pursuit of knowledge for legislative use may pry into and compel the exposure of the most intimate and sacred affairs of private citizens, provided only that the

matters so exposed may *legitimately* influence the mind of the Commission, *even on this theory* the inquiry still remains whether in the language of the statute the questions which the appellant refused to answer were "pertinent to the question under inquiry."

In answer to questions from the Committee or its counsel, appellant testified fully to a great many matters very few of which were within the cognizance or jurisdiction of Congress. His testimony appears in full in the Record (pp. 26-72), and is digested, though imperfectly, in the indictment (*ante*, pp. 9-13). He testified to the organization of the California Petroleum Corporation, the sale and flotation of its securities, the syndicate operations in connection therewith, and the activities of his own firm and of other firms which were interested in the syndicate. He was asked whether any national banks had participated in the syndicate and he answered no. He was then asked whether any national bank officers were members of the syndicate. He replied in detail that there were fifteen officers of national banks who were members of his syndicate. They were connected with seven national banks, four of which were in New York, two in Chicago and one in Detroit. He testified further that it was customary to offer syndicate participations to national bank officers and sometimes to national banks themselves (p. 48).

The fourth partner in the syndicate is a private banking firm and wholly beyond any Congressional supervision or inquiry. The court below did not hold that the appellant was obliged to answer this question, but made its finding solely upon the supposed right of the Committee to exact an answer from the witness as to the other question asking for the names of national banks and its officers of national banks who participated in the syndicate. As the appellant had testified that no national banks participated therein, the question is limited to the names of these particular national bank officers. This, with the other question as to the name of the fourth partner in his syndicate, are the only two questions which he refused to answer. This constitutes his alleged contumacy.

It is submitted that the Committee was without power to compel appellant to answer either of these two questions because they were not pertinent "to the question under inquiry." The question under inquiry is identified by the preamble reciting that it was charged that national banks were engaged in the "promotion, underwriting and exploitation of speculative enterprises and in the purchase and sale of securities of such enterprise," and the similar recitals of the Resolution (Record, 12). If such were true, the Committee might desire to recommend remedial legislation concerning it. Indeed, if Congress deemed the practice an evil, the rumor of its existence was sufficient for it to enact legislation against it. Much more did it become sufficient for the purpose of Congress when the Committee learned from the testimony of the appellant that while no national banks participated, national bank officers were in the syndicate, and that it *was customary* to offer syndicate participations to national bank officers and sometimes to national banks themselves. The Committee then had all the information it required or could use to recommend or frame legislation which would forbid the recurrence of this practice, if it considered that it should be stopped. The fact which the Committee was charged to ascertain was whether national banks or their officers participated in these transactions; not who they were. It had no concern with the identity of the banks, or of the particular bank officers. In this case there were no national banks involved. Consequently, the sole information which the Committee attempted to get and which the appellant refused to supply was the *names* of the national bank officers who were in the syndicate.

This information was entirely unnecessary and immaterial. The Committee had been informed of the only important fact, namely, that *national bank officers were in this particular syndicate* and that it was the *general custom* to offer participations to national bank officers and to the national banks themselves. This was the only question on which the Committee could have made a finding. A further finding

as to the names of the officers would be irrelevant and surplusage. Congress could not be interested in their names. It is not a court and could not visit the particular individuals with any penalties even if the act of participating in such a syndicate were an offense; it could not remove them from their position; it could not legislate with respect to them individually; it could not deal with them personally at all. The information already given by the appellant as to the fact of national bank officers being in this particular syndicate and that it was the general custom to offer participations to bank officers and to banks themselves was the basic and the only information which Congress could possibly need, or could employ, in order to legislate on the subject. The power of Congress to conduct an inquiry in aid of legislation was discharged fully when it thus obtained the information necessary to legislate. If the questions which appellant refused to answer called for information which was not necessary, the questions were "not pertinent to the question under inquiry." Therefore, when the Committee pressed the appellant to state the names of his associates who happened to be national bank officers it was not asking him for any information provided to be ascertained by the resolution or which the Committee was entitled to know in order to recommend or frame remedial legislation concerning national banks. It was endeavoring merely to make him divulge the list of his syndicate names. Even though the Committee was entitled to know the actual fact whether national bank officers took part in these syndicates, it exceeded its jurisdiction when it attempted to go further and pry into the list of syndicate names. Such inquiry was not authorized either by the resolutions or by the general powers of Congress. It would be only an offensive inquisition into the private affairs of appellant's clients. He had testified very fully to many matters as to which the Committee had no right to inquire, and he refused to answer these questions, not in a spirit of contumacy, but only because the answers would divulge the private affairs of others who had become his associates in the syndicate, under the usual relation of business confidence. Honor forbade the sacrifice of this confidence except through legal compulsion. Being advised by counsel that

the law did not so compel, appellant, as an honorable man, had no choice but to refuse answer.

In *Matter of Barnes*, 204 N. Y., 108 (1913), the Court of Appeals upheld Barnes in his refusal to disclose his private business affairs to a committee of the Legislature investigating alleged corruption in Albany upon the ground that the information which he refused to disclose *was not necessary to the inquiry*. The statute under which the proceeding was brought provided for the commitment of a witness "who refuses without reasonable cause \* \* \* to answer a legal and pertinent question before such Committee." (Code of Civil Procedure, Sec. 856). A committee had been appointed, pursuant to a current resolution of the Senate and Assembly, to investigate charges of corruption and maladministration in the public offices of the City and County of Albany and to report recommendations for remedial legislation. The witness Barnes, described as "a leader of the dominant political party in Albany County," was brought before the Committee by subpoena and was directed to produce the ledgers and books of original entry showing the business of the Journal Company, a corporation of which he was the president. He was also asked certain questions with respect to his connections with the J. B. Lyons Company, a corporation which had furnished Albany County with printing for a period of ten years and of whose stock Barnes held 750 out of an issue of 3000 shares. He was asked when he got his stock, whether he paid anything for it, whether he had talked to Mr. Lyon about the consideration for the stock and whether the stock was a gift to him. Barnes refused to answer the questions, and also to submit the books of the Journal Company but offered to furnish the Committee verified copy of the contents of the books showing the dealings for the period desired with the City, County and their officials. Upon the hearing in contempt proceedings it was adjudged that the witness be committed until he answered the questions and produced the books of the Journal Company showing its business "with various departments of the City and County of Albany and with persons and corporations transacting business with said City and County for the past ten years."

The Court of Appeals reversed the Special Term and upheld Barnes in his refusal to answer the questions and produce the books. It held that the information which the witness offered to give the Committee as to the contents of the books was all that was necessary for the Committee's purposes and the witness was entitled to stop his testimony at that point and to refuse to answer the questions. The Court said (p. 115):

" Taking up the question of the right to compel the witness to produce the books of the Journal Company of which he was the President, I think it turns upon whether their production became necessary to the inquiry set on foot through the Legislative Committee. If the evidence before that body was a sufficient showing of the character of the dealings and of the methods of the Company in transactions with the Departments of the City and County Government, then I think it was not, in the language of Section 354, 'a proper case' to insist upon laying bare the corporate books. The Committee wanted such evidence of abuses or of corrupt practices or of such official misconduct as would enable it to 'report the information required by the resolution \* \* \* with such recommendations as the public interests required.' It was not a proceeding against the corporation itself; for it was brought into the investigation incidentally to a general inquiry into the conduct by the officers of the municipal government. The Committee was not collecting evidence to visit the corporations with pains and penalties. It was an investigating body seeking material for general legislation. \* \* \* What the citizen may refuse to do is referable to his constitutional rights, but a corporation does not stand upon the same ground. It receives its charter subject to the reserved right of the Legislature to inquire into the exercise of the franchises and privileges conferred. Therefore it is that when the witness, Barnes, refused to produce, or to allow to be produced, the corporate books, his refusal cannot be supported on any other ground than that the committee had all the information upon the subject of the inquiry touching the Journal Company's relations with the city and county departments that was necessary for its general purposes and that to allow an examination into the business of the company, generally, as it would be revealed in its books, was improper and without jurisdiction."

If this restriction apply even in the case of a corporation, *a fortiori* must it be true where the citizen and his constitutional rights are involved; and still stronger in the case of Congress whose powers of investigation are much more limited

than those of a state legislature. As we show in the case at bar that the information given by the appellant to the sub-committee was sufficient for its purposes, so the Court of Appeals of New York held (p. 116) that

“The evidence showed the practices of the company in its transaction of the public business and its methods in dealing with public officials, *sufficiently, for the committee to frame recommendations, if any were deemed needful, for further legislation in the public \*interest.*

And further (p. 118) :

“I think that with the information furnished, and offered to be furnished, the committee unwarrantably insisted upon an examination of all the entries in the corporate books. Having the admissions and knowledge, which the evidence afforded it, whatever conclusion it might lead to, to permit the committee to proceed to the desired length would be unnecessary to the object of its inquiry and make offensively inquisitorial a proceeding not visitatorial in its nature, in the sense of being instituted for the inspection and control of the corporation itself. I think it was not ‘a proper case’ for compelling the witness to bring the corporate books.”

In the case at bar the court below held that, although the appellant had given the sub-committee the information that the national bank officers engaged in participations, the committee might ask their names so as to obtain “cumulative informa-

---

\* Here the Court summarized what had been testified to before the Committee :

“It appeared in evidence that the Journal Company published the Albany Evening Journal, a daily newspaper, in the city of Albany. The Argus Company had the contract to print the proceedings of the common council and the reports of the various officers and departments of the city. These would be kept in type. Copies would be ordered from the Journal Company by officials, which would obtain them from the Argus Company. The Journal Company would deliver them and receive twenty-five per cent. of the cost price, without other service than turning over the order to the Argus Company. The Argus Company, also, paid to the Journal Company fifteen per cent. of the amount received by it from its printing contracts. Printing for the city officials was done by the Journal Company without competitive bidding, by dividing an order, when in excess of \$250, the figure at which competitive bidding was necessary for city work. The Journal Company had been paid by the state for bills, after audit by the state comptroller, for the printing of the Session Laws for a period of twelve years, when, as it is charged, it had done no such printing, except as it was done from forms purchased from others. These facts had been testified to and Barnes offered to furnish the committee with true copies, verified, of the contents of the corporate books, which showed all the dealings for the period in question with the city and county, and with their officials.

tion" on that point. The court fell into a curious error in supposing that where the fact to be ascertained was whether national bank officers engaged in syndicate transactions, and such fact was ascertained, the names of the officers could be cumulative information on the point. The court says:

"The fact that the committee had already heard testimony to the effect that such officers engaged in participations, did not preclude the Committee from obtaining cumulative information upon that point. The Committee may have considered it desirable to make this inquiry in numerous instances, with a view of ascertaining whether such participations were engaged in frequently and throughout the country, or only by the same set of officers of the same national banks, or whether such engagements were only occasional. As a result of such inquiry Congress may have drawn conclusions upon which to base legislation" (Record, 341).

The names of the officers could not be cumulative to the testimony that such officers accepted these participations. Nor could such knowledge throw light on any other phase of the subject as suggested by the court below. It could make no difference "whether such participations were engaged in frequently and throughout the country" or "were only occasional" or whether only these same officers were so engaged. If the committee had learned that the practice was pursued by a single officer on even a single occasion and Congress deemed it wrong, no additional information could be needed by the Committee to legislate against it. It had all the necessary information then and there. But the Court says that "as a result of such inquiry Congress may have drawn conclusions upon which to base legislation." The answer is that Congress did draw conclusions and did base legislation on them; for the Committee accepted the testimony of appellant and recommended legislation and drafted a bill prohibiting national banks and national bank officers from engaging in such syndicate enterprises (Record, pp. 238, 241, 242).

The committee states in its report (Record, 123) that the information sought from Mr. Henry was germane to the question "whether national bank officers are being influenced by any form of reward to lend the money of their banks on non-listed and unseasoned stocks. It was impossible for the com-

committee without knowing the identity of the banks and officers to determine whether these participations to officers were given for the purpose of inducing the banks they served to accept these securities as collateral for loans or whether they were so accepted." As stated above (page 18), the committee avoided questioning Mr. Henry as to this. Had he been asked whether participations were given for such purpose, or for what purpose, if any, he would, at least, have had an opportunity to repudiate this suggestion of improper conduct.

But let us assume that the witness had disclosed the names of the bank officers, and that the latter had been called, and had either admitted or denied that they had been influenced in their official capacity by their participation in the syndicate; how could such admission or denial affect the question of the desirability of legislation prohibiting such participation?

This was the view taken in the *Barnes case* by the Special Term when it directed Barnes to answer questions as to whether he had paid anything for his stock in the printing Company, and why it was given to him, after it had been testified that he, a political leader, had such stock interest in the Company which was the beneficiary of the County's printing business. The Court thought the information would throw more light on the subject whether

"a person in that position had acquired a substantial stock-interest in a company, which furnished printing to a large amount to the political sub-division in which he was a figure of power, without any adequate compensation therefor, and whether his species of patronage had been given to the company in return for an ownership, or interest."

After quoting this ruling of the Special Term, the Court of Appeals said:

"Granting that it was the fact and that the stock was given to Barnes, it was his private affair and, notwithstanding his position in the political world as a 'leader' of his party in the county, I think that the committee exceeded the true scope of its jurisdiction, when seeking to elicit such evidence by their questions. \* \* \* The fact of his interest in a company, which was contracting and dealing profitably with the municipal departments and public officials, was made known and the committee could make such inference, and deduce such con-

*clusions therefrom for its report, as its members might deem to be justified. The committee could not be aided, within the proper legislative province of its inquiry, by the knowledge of how Barnes had obtained his stock. He owned it and the time when he got it, or the consideration for it, were matters quite immaterial and beyond the jurisdiction of the committee to inquire into. Section 856 requires that the questions to be answered shall be 'pertinent'; that is, they must be pertinent to an inquiry of the investigating committee into the necessity for remedial legislation. 'No person can be punished for contumacy as a witness before either house unless his testimony is required in a matter into which the house has jurisdiction to inquire, and \* \* \* neither of those bodies possesses the general power of making inquiry into the private affairs of the citizen.' (People ex rel. McDonald v. Keeler, 99 N. Y., 463, at p. 478). This was observed with respect to the houses of Congress; but the remark is equally applicable to those of the state legislature. If Barnes had the right to acquire an interest in the Lyon Company, which may not well be disputed, and used his political influence in aid of its business, the committee has the fact and is able to form its own conclusions as to the desirability of recommending any further remedial legislation, in aid of a moral, economical and efficient administration of government by the municipalities of the state. To find out whether Barnes paid for his stock or not, would not aid the legislative body in that respect" (p. 119).*

And in the concurring opinion of WERNER, J., it was said:

"The statute (Section 856) directs that if a person subpoenaed, etc., refuses without reasonable cause 'to answer a legal and pertinent question', he may be dealt with according to its provisions. What is a legal and pertinent question? Obviously one that violates no legal right of the witness, and that is pertinent—that is relevant and material—to the purpose of the proceeding or investigation in which the witness is being examined. If the question goes beyond this limitation, it is illegal and impertinent and the witness cannot be compelled to answer it. Who is to decide whether a question is legal and pertinent? *If a legislative committee or its counsel are to be the final arbiters upon this important limitation, it is an idle ceremony to appeal to the courts.* It seems to me that the plain import of the words 'legal' and 'pertinent', as used in the statute, is to confine the proceeding within lawful bounds and proper methods with respect to the legal rights of the individual who is called upon to testify, and when he challenges the legality and pertinency of the information sought from him, it presents a question of law for the courts to decide" (p. 125).

After referring to the ownership of stock in the printing Company and the questions asked Barnes as to what he paid for the stock and how he acquired it, Judge WERNER continues :

"Neither would the answers to any of these questions throw any light upon the propriety or necessity for recommending future legislation designed to regulate, limit or forbid the letting of municipal contracts to corporations having stockholders of political influence who have paid nothing for their stock. *If that is an evil which can be reached and remedied by legislation, no amount of probing into the private affairs of any individual can make the necessity for such action more apparent or urgent*" (p. 126).

It will be noted in this case that the question of whether or not "the various matters for investigation recited in the extremely broad resolution of the Legislature are within the legitimate scope of a legislative inquiry" was not discussed. The point of the decision was that the questions asked and the evidence sought were not "*legal and pertinent*" because *they were not necessary for the purpose of the investigation*. Considering that Congress has only a grant of enumerated powers and possesses no general or undefined powers such as reside in the State Legislatures, how much stronger does this decision apply to the case at bar. When the Committee had learned of the fact that national bank officers were members of this syndicate and that it was customary for national bank officers and also national banks to participate in such transactions, there is no further information which it could require in order to legislate against the practice if it were thought an evil. The knowledge of the names of the officers could not possibly be necessary. If unnecessary it could not have legitimately influenced the mind of the Committee, and hence it was not pertinent ; and if not pertinent, the appellant rightfully declined to answer.

Conceding the right of the Committee to exact information from the appellant as to the questions which were pertinent to the matter under inquiry, it does not follow that the Committee is authorized to indulge in a roving examination into the private affairs of appellant merely because they happen to be incidentally connected with some facts which the Committee is entitled to know in order to discharge its legislative function. Once the Committee has learned the facts

which are adequate for its purpose, it exhausts its power ; any further inquiry cannot be supported upon the ground of necessity and it becomes a gratuitous inquisition.

As we have shown (*ante*, p. 53, *et seq.*) the only ground upon which the sacrifice of privacy of a citizen's affairs may be justified is that of necessity. Upon this ground the courts of justice compel a person to testify as to his private affairs where the testimony is necessary for the doing of justice as between others. As Professor Wigmore points out :

"When the course of justice requires the investigation of the truth, no man has any knowledge that is rightly private. All that society can fairly be expected to concede is that it will not exact this knowledge when necessity does not demand it, or when the benefit gained by exacting it would in general be less valuable than the disadvantage caused ; \* \* \*. On the other hand, if this duty exists for the individual to society, so also he may fairly demand that society, so far as the exaction of it is concerned, shall make the duty as little onerous as possible. He may demand that the compulsion be relaxed so far as it is not indispensable for the ascertainment of truth\* \* \* and that the law in general be so formed as to reduce to a minimum the necessary sacrifices made by the witness in the name of duty."

*Wigmore on Evidence*, Vol. III., Sec. 2192, p. 2967.

No other ground justifies the compulsion of testimony in legislative proceedings. The power of Congress to compel testimony of a citizen is not expressly conferred by the Constitution. If it exist at all where, as in the case at bar, a Subcommittee of one House of Congress is conducting an inquiry in aid of legislation, it is because implied as necessary to Congress for the execution of its express power of legislation. If in the particular question asked it is not necessary, then the power ceases. The citizen's duty to the Legislature to disclose his private affairs ends when it is not necessary for the Legislature to know them. There must be necessity. Thus, in *Burnham v. Morrissey*, 14 Gray, 226 (Mass., 1859) although the power of the House to coerce testimony was upheld, it was suggested with respect to the production of private papers that "such parts only as were relevant might have been exhibited and the others protected from exposure." A like caution was observed in *in re Falvey*, 7 Wis., 630 (1858) where, in support-

ing the commitment of a witness for contempt in refusing to appear before a legislative committee investigating alleged corruption in connection with the property of which the State was trustee, it was recognized that there must be a limit to the range of the inquiry. The Court said (p. 637):

"Still it is said that this power of the Legislature to investigate must have a limit somewhere, otherwise a committee might for partisan and malicious purposes penetrate and drag to light the most secret and private matters of any citizen of the State."

In *Briggs v. Mackellar*, 2 Abb. Pr. Rep. (N. Y.), 30 (1885), a case involving the power of a lower legislative body to coerce testimony, it was said that "any inquiry they make must be clearly within the scope and object for which they exist as a political body."

It cannot be that a legislative committee may force testimony from the citizen because as the District Court thought "as a result of such an inquiry Congress may have drawn conclusions upon which to base legislation" (Record, 341).

What has the Committee demanded which appellant refused? Merely the names of the national bank officers, a disclosure to that extent of the list of members of a private syndicate. Such information could furnish the basis for no legislation. Even if it had been volunteered, it would have been immaterial; the Committee must have disregarded it in its recommendations. What information the appellant gave to the Committee was all that could be necessary for its purposes. This is so obvious that its own statement is its proof. But if any other proof were needed, it would be found in the fact that the Committee accepted the testimony of appellant as adequate for its purposes and based thereon its recommendations for remedial legislation. The information given by appellant enabled the sub-committee to cover every branch of inquiry which the resolution directed it to pursue. The Report of the Committee recommends the amendment of Section 5146 R. S. U. S. by the passage of Section 14 prohibiting national bank officers from engaging in syndicate transactions, and of Section 15 prohibiting national banks from similar activities (Record, 236, 241, 242). It is apparent that these recommendations were the only ones which the Committee could make under

the terms of the resolution as to the conduct of national banks and their officers. In no possible way could the names or identities of any national bank officers figure or be used in such recommendations.

(b)

*The questions were not pertinent to the question under inquiry for the additional reason that the knowledge of the names of the national bank officers would not have enabled the Committee to examine, through them, or through any other person or persons, into the transactions or affairs of the banks themselves.*

The refusal to disclose the names of the national bank officers who had participated in the California Petroleum Syndicate did not deny the Committee any information through which it might have carried its investigation further as to the transactions or affairs of the national bank officers or of the national banks themselves.

The real purpose of the Committee in attempting to extort from the appellant the names of the national bank officers, is shown by the statement which the Committee makes in its formal report :

" Mr. Henry, of Salomon & Co., who was called as a witness in regard to this transaction having refused to divulge the names of the national bank officers who received participations in this syndicate, his contumacy was certified to the House and from there to the United States Attorney for the District of Columbia for prosecution under sections 102, 103 and 104 of the Revised Statutes. Your committee is of opinion that the information sought from Mr. Henry is germane to the question, *national bank officers are being influenced by any form of reward to lend the money of their banks on newly listed and unseasoned stocks?* It was impossible for the committee without knowing the identity of the banks and officers to determine whether these participations to officers were given for the purpose of inducing the banks they served to accept these new securities as collateral for loans or whether they were so accepted " (Record, p. 123).

This careful definition of the attitude of the Committee toward the information sought of appellant demonstrates that the information could not be "germane" or pertinent for any such reason. Any examination in this way into the transactions of the banks, into the use of their moneys,

or their loans, and any effort thus to ascertain whether the banks had accepted "newly listed and unseasoned stocks" for collateral, *would be purely visitation*. The excuse offered for such visitation, that the committee desired to obtain information to recommend remedial legislation, would be unavailing for the reason that neither House of Congress has any jurisdiction to obtain information in this way. Congress has precluded itself from such inquiry, and *a fortiori* one House of Congress, much less a sub-committee, cannot accomplish by indirection what both houses have disabled themselves from doing directly. As this Court said in *Kilbourn v. Thompson*, *supra*, at page 182:

"Of course neither branch of Congress when acting separately can lawfully exercise more power than is conferred by the Constitution on the whole body, except in a few instances where authority is conferred by either House separately, as in the case of impeachments."

Congress has prescribed the sole method of the visitation or supervision of national banks. The statutes\* relating to the National Banking Associations and to the Comptroller of the Currency provide the complete and exclusive method of examining into the affairs of national banks, of the supervision over them, and of reports by them and the Comptroller of the Currency; and his deputies alone have authority to visit and inspect these institutions. Section 5240, as amended by the Act of February 19, 185, 18 Stat. L. 329, provides, *inter alia*, that the Comptroller, with the approval of the Secretary of the Treasury,

"shall as often as shall be deemed necessary or proper, appoint a suitable person or persons to make an examination of the affairs of every banking association. He shall have power to make a thorough examination into all the affairs of the association and in doing so to *examine any of the officers or agents thereof under oath*, and shall make a full and detailed report of the condition of the association to the Comptroller."

\* The visitorial powers authorized by the National Banking Act and the amendments thereto are contained in the Act of July 12, 1862, chapter 290, section 3; the Act of June 3, 1864, Chapter 106, Section 17; the Act of June 3, 1864, Chapter 106, Sections 40, 41 and 44; the Act of March 3, 1869, Chapter 130, Section 2; and the Act of June 3, 1864, Chapter 106, Section 54. These acts provide for various reports by the National Banks and for the "thorough examination into the affairs" of National Banks by bank examiners and the Comptroller of the Currency.

The information which he derives as to the condition and operation of national banks is intended ultimately for the benefit of the Congress, for by Section 333 of the Revised Statutes, as amended February 18, 1875 (18 Stat. L., 317), the Comptroller is directed to make reports to Congress at the commencement of each session, exhibiting, first,

" a summary of the state and condition of every association from which reports have been received the preceding year \* \* \* and such other information in relation to other associations as in his judgment may be useful ; third, *any amendments to the laws relating to banking by which the system may be improved and the security of its holders of its notes may be increased.*"

In making this provision Congress intended to prohibit indiscriminate legislative investigations into national banks, for it specifically said so in Title 62 of the National Banking Act, Chapter 4, Section 5241 (Act of June 3, 1864, Chap. 106, Sec. 54), where, after referring to the various provisions relating to national banks, above quoted, it provided

" no association shall be subject to any visitorial powers other than such as are authorized by this title or are vested in the courts of justice."

In the case of *Guthrie v. Harkness*, 199 U. S., 148 (1905), this Court held that these provisions constituted the full measure of Federal supervision over national banks (pp. 158-9 :

" The right of visitation being a public right existing in the State for the purpose of examining into the conduct of the corporation with a view to keeping it within its legal powers, Congress had in mind in passing this section that in other sections of the law it had made full and complete provision for investigation by the Comptroller of the Currency and examiners appointed by him, \* \* \* It was the intention that this statute should contain a full code of provisions upon the subject, and that no state law or enactment should undertake to exercise the right of visitation over a national corporation. *Except in so far as such corporation was liable to control in the courts of justice, this act was to be the full measure of visitorial power.*"

The mere resolution of one House cannot override the statutes of both Houses of Congress. House resolution No.

### 504 attempts to direct the Comptroller of Currency and the Secretary of the Treasury

"to comply with all directions of the committee for assistance in its labors, to place at the service of the committee all the data and records of their respective departments, to procure for the committee from time to time such information as is subject to their control and inspection, and to allow the use of their assistance for the making of such investigations with respect to corporations under their respective jurisdictions as the committee or any such committee may from time to time request" (Record, p. 15, par. 5).

Relying upon this pretended authority the Committee, through its counsel, applied by letter of September 24, 1912, to the Comptroller of the Currency to have that officer secure certain data for the Committee's purposes in conducting this inquiry. The Comptroller declined to honor the request. Upon application to the President to compel the Comptroller to supply the information, the matter was referred to the Attorney General for his opinion as to whether the Comptroller was subject to the orders of the Committee in this behalf. In his opinion, dated November 9, 1912, the Attorney General held that these sections of the resolution (which were directed toward compelling the Comptroller of the Currency to furnish information for the Committee) were void.\*

---

\* Op. Atty. Genl., vol. 29, pp. 585 *et seq.* After referring to the fact that the Committee first sought the information directly from the national banks themselves and that their officers declined to furnish it, the Attorney General considers the legal basis for the effort of the Committee to have the information obtained by the Comptroller of the Currency. The opinion states that the counsel for the Committee explains why the information is desired, in part, because

"The committee desires to secure data showing (1) the character of the transactions in which certain of the leading national banks of the country have been engaging such as the promotion and underwriting of securities on behalf of syndicates."

The Attorney General held that the paragraphs of the House resolution (Par. 5) relied upon by the Committee to compel the Comptroller and other executive officers to comply with the Committee's demands had no legal effect.

"The duties of the Comptroller," said the Attorney General, "are imposed by law and cannot be lessened or increased by resolution of one House."

Being thus thwarted in its efforts to procure information in this way and convinced that under Section 5241 the national banks were alone subject to visitation by the Comptroller of the Currency or in the courts of justice, the Committee caused a bill to be introduced in the House, May 4, 1912, amending Section 5241 so that it should read :

SECTION 5241. No association shall be subject to any visitatorial powers other than such as are authorized by this title or are visited in the courts of justice or such as shall be or shall have been exercised or directed by Congress or either House thereof."

The House passed the bill on May 18, 1912. The Senate delayed action until July 31, 1912, when it was adversely reported from the Finance Committee. The Senate refused to pass the bill (Record, 87). The fact that this provision was enacted as a part of Section 21 of the Act of December 23, 1913, known as the Federal Reserve Act, is of no consequence. Whatever effect it may have, if it can have any, to ratify the exercise of visitatorial power by the Committee which was unlawful at the time of its exercise, it cannot make the defendant guilty of a crime for refusing to be made the instrument of such usurpation. If this was the intent of the provision it is an *ex post facto* law in its most aggravated form.

Thus it appears that according to the Committee's own opinion it had no authority at the time of the appellant's examination to examine directly into the affairs of the national banks; or, to procure the information from the Comptroller of the Currency by compelling him to secure it according to the directions of the House resolution. Then it

---

After referring to Section 5240, which authorizes the Comptroller, with the approval of the Secretary of the Treasury, to appoint suitable persons to make examinations into the affairs of the banks, the Attorney General said :

" But clearly the Comptroller cannot exercise such power merely for the purpose of procuring information for a committee of one of the Houses of Congress on which that committee may base its conclusion as to what amendatory legislation is necessary or desirable. If the committee is without adequate powers to enable it to pursue the inquiry committed to it by the House (as to which I express no opinion), it should seek additional power by way of amendment to the law or by joint resolution to both Houses by a strained construction of the statutes of Congress. It cannot properly expect the Comptroller of the Currency to exercise a power given to him for a definite purpose to procure information for another purpose, thus furnishing indirectly to the committee information which the law does not authorize it to get directly."

attempted to have Section 5241 amended by giving this authority to either House of Congress, but the Senate refused to pass such an amendment. Unable to obtain this information directly, the Committee endeavored to circumvent the law and obtain it indirectly by examining the officers of the national banks. That such could not be done appears too plain for discussion; and yet the only excuse for this attempt to force appellant to give the names of the national bank officers under penalty of imprisonment is the statement of the Committee above-quoted—that it wished to pursue this very course.

CONCLUSION. THE ORDER OF THE DISTRICT COURT SHOULD BE REVERSED, AND THE APPELLANT DISCHARGED FROM CUSTODY.

Respectfully submitted,

JOHN C. SPOONER,  
PAUL D. CRAVATH,  
JOHN D. LINDSAY,  
STUART McNAMARA,  
Of Counsel.

Office Supreme Court, U. S.

FILED

FEB 24 1914

JAMES D. MAYER

CLERK

# Supreme Court of the United States.

OCTOBER TERM, 1913.

No. ~~2310~~ 2310

GEORGE G. HENRY,  
*Appellant,*  
*against*

WILLIAM HENKEL, United States Marshal for the Southern  
District of New York.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE  
SOUTHERN DISTRICT OF NEW YORK.

## APPELLANT'S REPLY BRIEF.

JOHN C. SPOONER,  
PAUL D. CRAVATH,  
JOHN D. LINDSAY,  
STUART McNAMARA,  
*Of Counsel.*

In the Supreme Court of the United States.

OCTOBER TERM, 1913.

GEORGE G. HENRY,  
Appellant,

AGAINST

WILLIAM HENKEL, United States  
Marshal for the Southern Dis-  
trict of New York.

No. 639.

REPLY BRIEF OF APPELLANT.

The brief of the Government consists in the main of a contention that "*the points attempted to be made by appellant are not open in this proceeding*" (Appellee's brief, p. 1). It claims that this appeal is "an attempt by way of *habeas corpus* to avoid the effect of a warrant of commitment issued by a commissioner under Section 1014 R. S. after an express finding of 'probable cause.'" After reciting that "it is admitted that the appellant is the person charged in the indictment and that the acts charged therein were done by him in the District of Columbia" it concludes that "none of these contentions is open on writ of *habeas corpus* in removal proceedings" (p. 2).

This liberal notion of a citizen's right when the Government seeks to drag him from his home to stand trial in a distant jurisdiction is further unfolded in the Government's contention that "when a defendant has been permitted a hearing before the Commissioner as to his identity, his commission of the acts in the place charged, and the existence of

a *prima facie* case of offence against a law of the United States, he has had all the advantages to which his absence from the district where the offense was committed entitle him" (Page 10). This extraordinary position when analyzed, amounts to this: The defendant may be permitted a hearing before the Commissioner. But if in such hearing he admits his identity and that he committed the acts charged, he has no further rights. He must be removed as a matter of routine. He cannot show that the acts charged constitute no offense, or that the evidence given before the Commissioner fails to show the commission of any offence.

To state this proposition is to refute it. It is rejected flatly by this Court in the language of Mr. Justice PECKHAM in *Greene v. Henkel*, 183 U. S., pages 249, 261 (1902):

"We do not, however, hold that when an indictment charges no offense against the laws of the United States and the evidence given fails to show any, or if it appear that the offense charged was not committed or triable in the district to which the removal is sought, the Court would be justified in ordering the removal and thus subjecting the defendant to the necessity of making such defense in the court where the indictment was found. In that case there would be no jurisdiction to commit nor any to order the removal of the prisoner."

This proceeding challenges the legality of the appellant's detention under the commitment issued by the Commissioner. The appellant contends that no offense is charged and that the evidence given before the Commissioner showed none, and that the latter is without jurisdiction to issue the commitment; hence that the appellant's imprisonment was without authority of law in violation of his rights, privileges and immunities under the constitution and laws of the United States (Petition, pp. 3-5; assignments of errors, pp. 343-5).

This involves no attack upon the indictment *as a pleading* (*Benson v. Henkel*, 198 U. S., 1, 1905). It is considered only *as the evidence in the case*. There is no effort to have the court on appeal revise the determination of the Commissioner as to the weight of the evidence (*Hyde v. Shine*, 199 U. S., 62, 1905). There is no evidence to weigh; there is no issue of fact. The inquiry is whether the whole evidence shows any offense. Nor is this an effort to avoid a trial in a court having

jurisdiction of a defendant's person (*Johnson v. Hoy*, 227 U. S., 245, 1913) or to preclude such a court from deciding questions which in the orderly course should be decided by it before resort is had to *habeas corpus* in such proceeding (*In Re Chapman*, 156 U. S., 211, 1894); or an attempt to employ the writ to perform the function of a writ of error (*Glasgow v. Moyer*, 225 U. S., 420, 1911).

IF THE EVIDENCE BEFORE THE COMMISSIONER FAILS TO SHOW ANY OFFENSE THE COMMISSIONER HAS NO JURISDICTION TO COMMIT THE ACCUSED AND THE LATTER IS ILLEGALLY DEPRIVED OF HIS LIBERTY.

In the case at bar the Government introduced in evidence the indictment and bench warrant and then rested. Appellant offered in evidence his testimony before the Committee and the Committee's report. The bench warrant, of course, is without probative force and the only evidence before the Commissioner was that furnished by the indictment, the appellant's testimony before the Committee and the Committee's report. The Government was free to offer any other evidence it desired, but it offered none.

The Government claims that the appellant was not entitled to contend before the Commissioner, or on *habeas corpus*, that the indictment does not set forth a crime. It states in its brief that the case of *Tinsley v. Treat*, 205 U. S., 20, "should not be, and, it is submitted, never has been, extended to defenses other than identity and commission of the acts charged" (p. 2). This statement of that case must be inadvertent, for the Court specifically said (at p. 20) that it is the duty of the Commissioner in a removal proceeding

"to look into the indictment, to ascertain whether an offense against the United States is charged, find whether there was probable cause, and determine whether the court to which the accused is sought to be removed has jurisdiction of the same."

In fact the Chief Justice, in delivering the opinion, quoted with approval an extract from the opinion of Mr. Justice JACKSON, then Circuit Judge, in *Greene's case*, 52 Fed., 104 :

"The liberty of the citizen and his general right to be tried in a tribunal or forum of his domicile imposed upon the judge the duty of considering and passing upon those questions."

3

It is not claimed that the Commissioner should determine the sufficiency of the indictment as a pleading. All attacks upon an indictment as to matters of form or technical sufficiency belong to the court in which the indictment is found. Appellant makes no objection to the indictment as to its form. The question raised by appellant before the Commissioner and on this appeal is the sufficiency of the indictment *as proof*, not as a *pleading*.

In *Benson v. Henkel*, 198 U. S., p. 1 (1905) it was sought to avoid removal proceedings by challenging the sufficiency of the indictment as a pleading. The distinction above mentioned between considering the indictment as a pleading and as the evidence in the case was noted by this Court. Holding that inquiries into the technical sufficiency of the indictment are not proper in removal proceedings, the Court remarked:

"Indeed, it is scarcely seemly for a committing magistrate to examine closely into the validity of an indictment found in a Federal Court of another District, and subject to be passed upon by such court on demurrer or otherwise" (p. 10).

But in so far as *the indictment is the evidence* on which it is sought to have the removal the Court said:

"Of course, this rule has its limitations. If the indictment were a mere information, or obviously, upon inspection, set forth no crime against the United States, or a wholly different crime from that alleged as the basis for proceedings, or if such crime be charged to have been committed in another District from that to which the extradition is sought, the Commissioner could not properly consider it as ground for removal. In such cases resort must be had to other evidence of probable cause" (p. 10).

An indictment offered in evidence in removal proceedings supplies *prima facie* proof of the facts therein alleged *Greene v. Henkel*, 183 U. S., 249; *Beavers v. Henkel*, 194 U. S., 73, 81-85. *Benson v. Henkel*, 198 U. S., 1; *Hyde v. Shine*, 199 U. S., 62). The notion which formerly prevailed that this *prima facie* showing could not be rebutted was long since rejected and it is now beyond dispute that the person sought to be removed may not only show that the indictment states no crime against the United States, but may even offer evidence on his own behalf to rebut this *prima facie* showing where the in-

dictment does state a crime. In *Greene v. Henkel*, 183 U. S., 249, the Commissioner held the indictment *per se* conclusive proof of probable cause and rejected the proof offered by the accused in rebuttal. The District judge refused a warrant of removal and remanded the case to the Commissioner with instructions to receive the defendant's proof. The proof was received but the Commissioner again held the defendant, who then sued out a writ of *habeas corpus*. He omitted, however, to incorporate in his *habeas corpus* proceeding the evidence offered before the Commissioner. It hence resulted that the evidence was not before this Court on Appeal. It was held that in the absence of this evidence it must be assumed that the finding of probable cause was supported by proper proof. Mr. Justice PECKHAM, however, took pains to point out that where the facts established *prima facie* by the indictment, failed to constitute a crime and there was no other proof, there was *no jurisdiction to remove*. He said (p. 261):

"We do not, however, hold that when an indictment charges no offense against the laws of the United States, and the evidence given fails to show any, or if it appear that the offense charged was not committed or triable in the district to which the removal is sought, the court would be justified in ordering the removal, and thus subjecting the defendant to the necessity of making such a defense in the court where the indictment was found. In that case there would be no jurisdiction to commit nor any to order the removal of the prisoner."

In the case of *Tinsley v. Treat*, 205 U. S., 20 (1907), effort was made to remove Tinsley from the Eastern District of Virginia to the Middle District of Tennessee for trial under an indictment charging violation of the Sherman Act. Tinsley offered to rebut the *prima facie* showing of the indictment by proving that the act was not committed in the middle district of Tennessee. The Commissioner rejected the proof and held him for removal. On appeal the specific question presented to this Court was whether he could rebut the Government's *prima facie* showing where the indictment (as in the case at bar), was the only evidence offered by the Government. The court held that the *prima facie* showing of the indictment could be rebutted. It

referred to the attitude taken by the lower court in refusing to receive the accused's proof and said :

" In other words, the indictment was in effect held to be conclusive. The Circuit Judge said, it is true, that probable cause must be shown in order to obtain a removal, but he held that inasmuch as the copy of the indictment alone was regarded as sufficient evidence of probable cause in *Beavers v. Henkel*, 194 U. S., 73, it was sufficient in the present case. In that case, however, no evidence was introduced to overcome the *prima facie* case made by the indictment except that evidence was offered as to what passed in the grand jury room, and rejected on that ground and not because it went to the merits " (p. 28).

Referring to Section 1014 of the Revised Statutes and to the function of the district judge in proceedings for removal thereunder the Court continued (p. 29) :

" It has been repeatedly held that in such cases the judge exercises something more than a mere ministerial function, involving no judicial discretion. He must look into the indictment to ascertain whether an offense against the United States is charged, find whether there was probable cause, and determine whether the court to which the accused is sought to be removed has jurisdiction of the same. \* \* \* In the language of Mr. Justice BREWER, in delivering the opinion in *Beaver v. Henkel*, 194 U. S., 73, 83 : ' It may be conceded that no such removal should be summarily and arbitrarily made. There are risks and burdens attending it which ought not to be needlessly cast upon any individual. These may not be serious in a removal from New York to Brooklyn, but might be if the removal was from San Francisco to New York. And statutory provisions must be interpreted in the light of all that may be done under them. We must never forget that in all controversies, civil or criminal, between the Government and an individual the latter is entitled to reasonable protection. Such seems to have been the purpose of Congress in enacting section 1014, Rev. Stat., which requires that the order of removal be issued by the judge of the district in which the defendant is arrested. In other words, the removal is made a judicial, rather than a mere ministerial act. ' "

The Court then referred to previous cases (*Greene v. Henkel*, 183 U. S., 249; *Beavers v. Henkel*, 194 U. S., 73; *Benson v. Henkel*, 198 U. S., 1; *Hyde v. Shine*, 199 U. S., 62), and called attention to the fact that where an offense was stated defectively in the indictment the

defendant might not attack the indictment as a pleading and that the Government was free at any time to supplement the proof furnished by the indictment by offering other proof and then came to the specific question whether the Government might claim that the indictment constitutes conclusive proof that the defendant has committed the offense charged. The Court says (p. 31) :

" We regard that question as specifically presented in the present case and we hold that the indictment cannot be treated as conclusive under section 1014. This being so, we are of opinion that the evidence offered should have been admitted. It is contended that that evidence was immaterial, and, if admitted, could not have affected the decision of either the District or Circuit Judge. Of course, if the indictment were conclusive, any evidence might be said to be immaterial, but if the indictment were only *prima facie*, then evidence tending to show that no offense triable in the Middle District of Tennessee had been committed by defendant in that district could not be regarded as immaterial. \* \* \* Nor can the exclusion of the evidence offered be treated as mere error, inasmuch as the ruling involved the denial of a right secured by statute under the Constitution " (p. 33).

*In Pereles v. Weil*, 157 Fed., 419 (D. C. Wis., 1907), SANBORN, J., examined the evidence before the Commissioner in reviewing the validity of his commitment in *habeas corpus* and decided that taken as a whole it did not establish probable cause and that the indictment stated no crime. His opinion collates the cases in a convenient summary :

" In an examination by the commissioner under section 1014, Rev. St., the indictment is presumptive evidence of probable cause as against the defendants (*Hyde v. Shine*, 199 U. S., 62, 25 Sup. Ct., 760, 50 L. Ed., 90; *Tinsley v. Treat*, 205 U. S., 20, 27 Sup. Ct., 430, 51 L. Ed., 689). In this proceeding it is necessary to be determined whether an offense against the United States has been committed, and whether there is probable cause to believe the defendants guilty (*In re Richter* (D. C.), 100 Fed., 295; *Horner v. U. S.*, 143 U. S., 207, 12 Sup. Ct. 407, 36 L. Ed., 126; *Greene v. Henkel*, 183 U. S., 249, 22 Sup. Ct., 218, 46 L. Ed., 177). Under the Sixth Amendment to the Constitution there is also a question whether the petitioning defendants shall be removed for trial to the district in which the indictment was found and whether the District Court of that District has jurisdiction of the offense charged

in the indictment. The Sixth Amendment to the constitution provides that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury within the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law. It is also the rule in *habeas corpus* proceedings that in determining the question of probable cause, the court will not review the finding of the commissioner where the evidence is conflicting. The question is, whether the evidence as a whole supports the finding? *The Court may review the evidence to ascertain what it really shows, and if it finds that all the evidence taken together does not support the commissioner's finding of probable cause, his ruling may be disregarded and the defendants discharged* (*Ex parte Rickelt* (C. C.), 61 Fed., 203; *In re Byron* (C. C.), 18 Fed., 722; *Horner v. U. S.*, 143 U. S., 570; 12 Sup. Ct., 522; 36 L. Ed., 266; *Terlinden v. Ames*, 184 U. S., 270; 22 Sup. Ct., 484; 46 L. Ed., 534; *Ornelas v. Ruiz*, 161 U. S., 509; 16 Sup. Ct., 689; 40 L. Ed., 789; *Grin v. Shine*, 187 U. S., 181; 23 Sup. Ct., 98; 47 L. Ed., 130; *In re Wadge* (C. C.), 16 Fed., 332; *U. S. v. Peckham* (D. C.), 143 Fed., 625; *Hyde v. Shine*, 199 U. S., 62; 25 Sup. Ct., 760; 50 L. Ed., 90; *U. S. Lantry* (C. C.), 30 Fed., 283. *If the indictment is not sufficient on its face to show that an offense against the United States has been committed, the defendants should be discharged* (*U. S. v. Conners* (D. C.), 111 Fed., 734; *Greene v. Henkel*, 183 U. S., 249; 22 Sup. Ct., 218; 46 L. Ed., 177; *U. S. v. Lantry* (C. C.), 30 Fed., 232; *In re Byrm* (C. C.), 18 Fed., 722; *In re Greene* (C. C.), 52 Fed., 104; *In re Daig* (C. C.), 4 Fed., 193; *In re Buell*, 3 Dill, 116, Fed. Cas. 2102; *In re Corning* (D. C.), 51 Fed., 205; *In re Terrell* (C. C.), 51 Fed., 213; *In re Wolf* (D. C.), 27 Fed., 606; *In re Huntington* (D. C.), 68 Fed., 881. If the indictment is good in substance, lacking only some technical averment of time or place or circumstance required to render it free from technical defects, the order for removal will be issued if the evidence supplies such defects, and shows probable cause to believe defendants guilty. *Greene v. Henkel*, 183 U. S., 249; 22 Sup. Ct., 218; 46 L. Ed., 177; *Tinsley v. Treat*, 205 U. S., 20, 31; 27 Sup. Ct., 430; 51 L. Ed., 689."

In the case at bar the appellant claims that no offense is charged and to that end argues that the matters stated in the indictment have no relation to sections 102-4, Rev. Stats., and are not within the scope thereof; that if these sections be employed to compel appellant to testify, Congress is attempting to exercise a power of coercing testi-

mony in aid of legislation which it does not possess. And he contends further, that on the other hand, even if the first two propositions be unsound, it still appears on the face of the indictment and the other evidence before the Commissioner that appellant did not refuse to answer any pertinent question and the evidence shows that there was no violation of sections 102-4. The question is jurisdiction—as to the jurisdiction of the Commissioner to hold appellant for removal. Appellant stands entirely upon this contention.

#### CERTAIN CASES CITED BY THE GOVERNMENT.

The Government contends (p. 3) that "mere inconvenience or possible hardship to the accused cannot militate against" removal under Section 1014. Appellant does not contend to the contrary. No argument *ab inconvenienti* is made. Appellant contends merely that the record shows, affirmatively, that no crime has been committed anywhere. The brief further states (p. 4) that the rights of appellant are gratified fully when he has a chance before the magistrate in the removal proceedings to have a hearing as to "his identity and the commission of the acts when and as charged, is allowed to present evidence and a finding of probable cause is made." In other words, the hearing before the Commissioner is to consist more in sound than in substance. It is to be merely a form to be gone through with on removal proceedings. This position is wholly untenable and is repudiated by this Court. The "hearing" means a hearing as judicially understood in which the defendant may dispute the evidence against him and offer evidence in his own behalf. Nor can it be claimed that the Commissioner's mistake in considering the evidence sufficient to show a crime is mere error not reviewable on *habeas corpus*, for as this Court said respecting a similar contention where the Commissioner rejected the defendant's offer of proof:

"Nor can the exclusion of the evidence offered be treated as mere error, inasmuch as the ruling involved the denial of a right secured by statute under the Constitution" (*Tinsley v. Treat, supra*, p. 32).

The Government refers *In Re Chapman*, 156 U. S., 211, and says (brief, p. 8) :

"In the *Chapman* case the identical questions pressed in the case at bar were sought to be raised in a petition to this court for a *habeas corpus* and the court denied leave."

This is a clear misconception of what was decided in that case. Chapman appeared in the Supreme Court of the District of Columbia and demurred to the indictment. From the Court's decision he appealed to the Court of Appeals of the District of Columbia which affirmed the judgment below. He was remanded to the court below for trial. Instead of proceeding in the orderly manner he attempted to appeal to this Court through the medium of *habeas corpus* proceedings in which he raised various questions. This Court held that the decisions of the court below had been only on a demurrer to the indictment and that the case had not gone to final judgment in either court. The result of a trial could not be assumed. In the interest of orderly administration of justice this Court declined to exercise appellate jurisdiction until the conclusion of the proceedings, when, if judgment went against the petitioner and a writ of error lies, petitioner could review the case to this court. If, on the other hand, the writ of error did not lie and the lower court had no jurisdiction, the petitioner might then seek his remedy through *habeas corpus*. That case also involved a direct application to this Court for a writ of *habeas corpus*. *There was no removal proceedings whatever.*

This Court held that

"there were no exceptional circumstances which demand our interposition in advance of adjudication by the courts of the District upon the merits of the case before them" (p. 218).

Certain other cases are cited by the Government which have no bearing on this appeal.

The case of *Riggins v. United States*, 199 U. S., 547, 551 (1905) is referred to (brief, p. 9) to show that appellant's questions are not open on this appeal. This case lends no support to the Government. It was not a removal case. Riggins was in custody in the Northern District of Alabama, Northern Division, under indictment found there in the Dis-

trict Court and was remitted under a *capias* for trial at the next session of the Circuit Court in that division and district. In order to escape trial he sued out *habeas corpus* and the Circuit Court, held by the District Judge, discharged the writ; from which order he appealed to this Court.

The case of *Glasgow v. Moyer*, 225 U. S., 421 (1912), is quoted by the Government (brief, p. 2). This case also was not a removal case. Glasgow was convicted in the District Court for the District of Delaware and was sentenced to the Atlanta penitentiary. After commencing his term he sued out *habeas corpus*, alleging irregularities in his trial, the prejudice of the trial judge and his disqualification to pass upon petitioner's motions in arrest of judgment and for a new trial because of his contention that the district judge became disqualified to hear motions or impose sentence by paragraphs 20 and 21 of the Judicial Code (Act of March 3, 1911, 36 Stat., 1087, Chap. 231, effective January 1, 1912).

In the case of *Johnson v. Hoy*, 227 U. S., 245 (1913), is relied upon by the Government (brief 2). This case was not a removal case. Johnson was indicted in the Northern District of Illinois, under the White Slave Traffic Act (June 25, 1910, 36 Stat., 825, Chap. 395). He was arrested in that District, where he resided, submitted to the jurisdiction of the Court and prayed bail which was fixed at \$30,000, but with the provision that no surety would be accepted who was indemnified against loss and that the defendant should not be allowed to deposit cash in lieu of bond. Johnson applied for *habeas corpus* on the ground (1) that the bail was excessive and the terms thereof onerous and prohibitive; and (2) that the Act under which he was indicted was unconstitutional. His petition was denied and he appealed to this Court, where a motion was made to admit him to bail pending the hearing. On his motion the case was advanced to be heard with others, involving the constitutionality of the same act. His counsel took part in the argument of that question January 6, 1913. At that time this Court was informed by the Government that on November 15, 1912, Johnson had already perfected his bail, which was approved by the district judge, and he was released from arrest under the indictment. Nevertheless his counsel contended that he was entitled to argue the constitutionality of the

statute in this proceeding, the main purpose of which had been to effect his release on bail. The Court held that as he had secured the very relief which the writ of *habeas corpus* was intended to afford, the appeal must be dismissed. He could not employ the writ of *habeas corpus* to present prematurely to this Court the determination of a question which belonged primarily to the court below to whose jurisdiction he had submitted, and where he had given bail to appear for trial in due course.

Respectfully submitted,

JOHN C. SPOONER,

PAUL D. CRAVATH,

JOHN D. LINDSAY,

STUART McNAMARA,

Of Counsel for Appellant.

U. S. DISTRICT COURT, S. D.  
E. D. NO. 13  
FEB 18 1914  
JAMES D. MAHER  
CLERK

No. ~~888~~ 216

---

*In the Supreme Court of the United States.*

OCTOBER TERM, 1913.

---

GEORGE G. HENRY, APPELLANT,

v.

WILLIAM HENKEL, UNITED STATES MARSHAL FOR  
THE SOUTHERN DISTRICT OF NEW YORK.

---

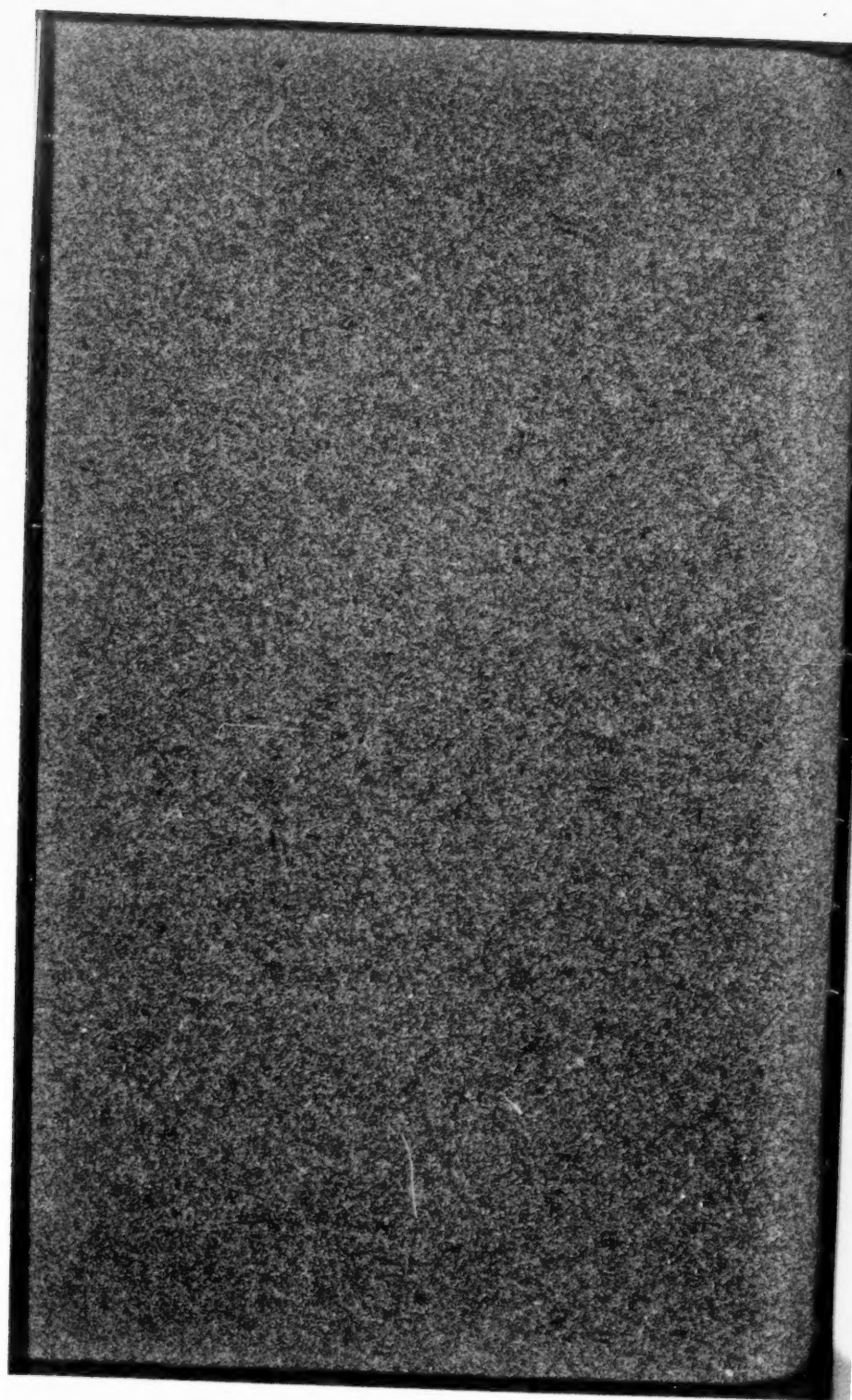
APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE  
SOUTHERN DISTRICT OF NEW YORK.

---

BRIEF FOR APPELLER.

---

WASHINGTON: GOVERNMENT PRINTING OFFICE: 1914.



# INDEX.

ARGUMENT	Page.
The points attempted to be made by appellant are not open in this proceeding	1-22
<i>Beavers v. Henkel</i> , 194 U. S. 73.	
<i>Benson v. Henkel</i> , 198 U. S. 1.	
<i>Glasgow v. Moyer</i> , 225 U. S. 420.	
<i>Greene v. Henkel</i> , 183 U. S. 249.	
<i>Hyde v. Shine</i> , 199 U. S. 62.	
<i>In re Chapman</i> , 156 U. S. 211.	
<i>Johnson v. Hoy</i> , 227 U. S. 245.	
<i>Riggins v. United States</i> , 199 U. S. 547.	
<i>Tinsley v. Treat</i> , 205 U. S. 20.	
Section 102, R. S., covers an investigation of the character undertaken in the case at bar	1-10
<i>In re Chapman</i> , 166 U. S. 661.	
Sections 102 et seq., R. S., are constitutional	13-18
<i>In re Chapman</i> , 166 U. S. 661.	
<i>Kilbourn v. Thompson</i> , 103 U. S. 168.	
State court decisions upholding the power of a legislative body to summon witnesses and to compel them to answer questions on inquiry in aid of legislation	14
<i>Briggs v. Mackellar</i> , 2 Abb. Pr. (N. Y.) 30.	
<i>Burnham v. Morrissey</i> , 14 Gray, 226.	
<i>People, ex. rel. McDonald, v. Keeler</i> , 99 N. Y. 463.	
<i>Wickelhausen v. Willett</i> , 10 Abb. Pr. (N. Y.) 164 (affirmed in <i>Wilckens v. Willet</i> , 1 Keyes, 521).	
The questions were pertinent to the inquiry.	18-22
CONCLUSION	22

# CASES CITED.

	Page.
<i>Beavers v. Henkel</i> , 194 U. S. 73 .....	4
<i>Benson v. Henkel</i> , 198 U. S. 1 .....	5
<i>Briggs v. Mackellar</i> , 2 Abb. Pr. (N. Y.) 30 .....	14
<i>Burnham v. Morrissey</i> , 14 Gray, 226 .....	15
<i>Doyle v. Falconer</i> , L. R. 1 P. C. 328 .....	16
<i>Fenton v. Hampton</i> , 11 Moore P. C. 347 .....	16
<i>Glasgow v. Moyer</i> , 225 U. S. 420 .....	2
<i>Grant v. United States</i> , 227 U. S. 74 .....	18
<i>Greene v. Henkel</i> , 183 U. S. 249 .....	5
<i>Hyde v. Shine</i> , 199 U. S. 62 .....	6
<i>Hyde v. United States</i> , 225 U. S. 347 .....	3
<i>In re Chapman</i> , 156 U. S. 211 .....	8
<i>In re Chapman</i> , 166 U. S. 661 .....	11, 21
<i>In re Falvey</i> , 7 Wis. 630 .....	21
<i>Interstate Commerce Commission v. Brimson</i> , 154 U. S. 447 .....	11
<i>Johnson v. Hoy</i> , 227 U. S. 245 .....	2, 7
<i>Kielley v. Carson</i> , 4 Moore P. C. 63 .....	16
<i>Kilbourn v. Thompson</i> , 103 U. S. 168 .....	13
<i>People, ex rel. McDonald, v. Keeler</i> , 99 N. Y. 463 .....	14
<i>Riggins v. United States</i> , 199 U. S. 547 .....	9
<i>Tinsley v. Treat</i> , 205 U. S. 20 .....	2
<i>Wickelhausen v. Willett</i> , 10 Abb. Pr. (N. Y.) 164 (affirmed in <i>Wilckens v. Willet</i> , 1 Keyes, 521) .....	14

# In the Supreme Court of the United States.

OCTOBER TERM, 1913.

GEORGE G. HENRY, APPELLANT,	}	No. 639.
v.		
WILLIAM HENKEL, UNITED STATES MAR-		
SHAL FOR THE SOUTHERN DISTRICT OF NEW YORK.		

APPEAL FROM THE DISTRICT COURT OF THE UNITED  
STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

## BRIEF FOR APPELLEE.

### ARGUMENT.

#### I.

The points attempted to be made by appellant are  
not open in this proceeding.

As the statement of facts shows, this was an attempt  
by way of *habeas corpus* to avoid the effect of a war-  
rant of commitment issued by a commissioner under  
section 1014, R. S., after an express finding of "prob-  
able cause" (R. 5). It is admitted that the appel-  
lant is the person charged in the indictment, and  
that the acts charged therein were done by him in

the District of Columbia. It is sought in this summary proceeding by an extraordinary writ to have this court consider the following propositions: (a) Section 102, R. S., should not be construed so as to cover questions asked by a committee of Congress investigating in aid of legislation; (b) if so construed, the act is unconstitutional; (c) the questions asked were not "pertinent to the question under inquiry" as required by section 102, R. S.

None of these contentions is open on writ of *habeas corpus* in removal proceedings. The writ was used and justified at the common law to enable a defendant to learn the charge against him and to be released on bail, if the offense were bailable. While its use has been much extended by American courts, the obstacles arising therefrom to the speedy and orderly disposition of criminal cases has led this court in recent cases to discountenance its use as a writ of error. *Glasgow v. Moyer*, 225 U. S. 420; *Johnson v. Hoy*, 227 U. S. 245. In *Tinsley v. Treat*, 205 U. S. 20, it was held that in a proceeding of this kind the petitioner was entitled to show to the committing magistrate that he had never done, in the district where he was indicted, the things charged in the indictment. That case should not be, and, it is submitted, never has been, extended to defenses other than identity and commission of the acts charged. It affords no warrant for such a proceeding as the present. On the contrary, such a construction is guarded against in the concluding paragraph of the opinion by the following language (p. 32):

Appellant was entitled to the judgment of the District Judge as to the existence of probable cause on the evidence that might have been adduced, and even if the District Judge had thereupon determined that probable cause existed, *and such determination could not be revised on habeas corpus*, it is nevertheless true that we have no such decision here, and the order of removal can not be sustained in its absence. Nor can the exclusion of the evidence offered be treated as *mere error*, inasmuch as the ruling involved the denial of a right secured by statute under the Constitution. (*Italics ours.*)

Section 1014 was passed merely to provide a procedure for apprehending throughout the entire extent of the United States persons charged with offenses committed in any part thereof. Such a procedure exists in every civilized State, and mere inconvenience or possible hardship to the accused can not militate against it. The criminal selects his own venue, and whether he go from one end of Texas to another, or from Maine to California, is a mere matter of degree. The same argument of inconvenience could be advanced on the other side, by insisting on the inconvenience to the Government of trying its case with an officer and before a court not familiar with the circumstances. The argument *ab inconvenienti*, on the one side as on the other, can be answered in the language of this court in *Hyde v. United States*, 225 U. S. 347, 364, saying: "Nor do we think that the size of our country has become too

great for the effective administration of criminal justice."

When, before a magistrate in removal proceedings, the defendant admits his identity and the commission of the acts when and as charged, is allowed to present evidence, and a finding of probable cause is made, to permit him thereupon to raise in *habeas corpus* proceedings the construction and constitutionality of the act on which he was indicted, and generally to enter into a discussion of the merits of his case—*e. g.*, in the case at bar, the pertinency of the questions asked—is beyond what his rights require. These questions can be as well presented to the Federal court which indicted him, and it must be assumed that he will there confront as able and impartial a judge as in the Federal district where he may be found. Certainly if he had remained in the district where the acts were committed and faced his accusers he would not have been permitted to appeal by way of *habeas corpus* from one Federal judge to another, and to allow him to do so on removal proceedings is but to give a premium to the criminal who flees.

In *Beavers v. Henkel*, 194 U. S. 73, 83, 84, 85, Mr. Justice Brewer, delivering the judgment of the court, said (p. 84):

The thought is that no one shall be subjected to the burden and expense of a trial until there has been a prior inquiry and adjudication by a responsible tribunal that there is probable cause to believe him guilty. But

the Constitution does not require two such inquiries and adjudications. The government, having once satisfied the provision for an inquiry and obtained an adjudication by the proper tribunal of the existence of probable cause, ought to be able without further litigation concerning that fact to bring the party charged into court for trial. The existence of probable cause is not made more certain by two inquiries and two indictments. Within the spirit of the rule of giving full effect to the records and judicial proceedings of other courts, an indictment, found by the proper grand jury, should be accepted everywhere through the United States as at least *prima facie* evidence of the existence of probable cause. And the place where such inquiry must be had and the decision of a grand jury obtained is the locality in which by the Constitution and laws the final trial must be had.

In *Greene v. Henkel*, 183 U. S. 249, 261, the court said in *habeas corpus* to removal proceedings:

Upon this writ the point to be decided is, whether the judge who made the order for the removal of the defendants had jurisdiction to make it, and if he had, the question whether upon the merits he ought to have made it is not one which can be reviewed by means of the writ of *habeas corpus*.

In *Benson v. Henkel*, 198 U. S. 1, 10, 11, the court said:

Indeed, it is scarcely seemly for a committing magistrate to examine closely into the validity of an indictment found in a Federal

Court of another District, and subject to be passed upon by such court on demurrer or otherwise. Of course, this rule has its limitations. If the indictment were a mere information, or obviously, upon inspection, set forth no crime against the United States, or a wholly different crime from that alleged as the basis for proceedings, or if such crime be charged to have been committed in another District from that to which the extradition is sought, the Commissioner could not properly consider it as ground for removal. In such cases resort must be had to other evidence of probable cause.

\* \* \* \* \*

\* \* \* An extradition Commissioner is not presumed to be acquainted with the niceties of criminal pleading. His functions are practically the same as those of an examining magistrate in an ordinary criminal case, and if the complaint upon which he acts or the indictment offered in support thereof contains the necessary elements of the offense, it is sufficient, although a more critical examination may show that the statute does not completely cover the case. *Pearce v. Texas*, 155 U. S. 311; *Davis's Case*, 122 Massachusetts, 324; *State v. O'Connor*, 38 Minnesota, 243; *In re Voorhees*, 32 N. J. Law, 141; *In re Greenough*, 31 Vermont, 279, 288.

In *Hyde v. Shine*, 199 U. S. 62, 84, the court said, confirming prior decisions:

\* \* \* It was held that the question whether the act charged was or was not a

crime was one which the trial court was competent to decide, and which this court would not review upon a writ of *habeas corpus*.

And again:

In the Federal courts, however, it is well settled that upon *habeas corpus* the court will not weigh the evidence, although if there is an entire lack of evidence to support the accusation the court may order his discharge. In this case, however, the production of the indictment made at least a *prima facie* case against the accused, and if the Commissioner received evidence on his behalf it was for him to say whether upon the whole testimony there was proof of probable cause. *In re Oteiza*, 136 U. S. 330; *Bryant v. United States*, 167 U. S. 104. \* \* \*

In its latest decision, *Johnson v. Hoy*, 227 U. S. 245, 247, the court said:

The writ of *habeas corpus* is not intended to serve the office of a writ of error even after verdict, and, for still stronger reasons, it is not available to a defendant before trial, except in rare and exceptional cases, as pointed out in *Ex parte Royall*, 117 U. S. 241. This is an effort to nullify that rule and to depart from the regular course of criminal proceedings by securing from this court, in advance, a decision on an issue of law which the defendant can raise in the District Court, with the right, if convicted, to a writ of error on any ruling adverse to his contention. That the orderly course of a trial must be pursued

and the usual remedies exhausted, even where the petitioner attacks on *habeas corpus* the constitutionality of the statute under which he was indicted, was decided in *Glasgow v. Moyer*, 225 U. S. 420. That and other similar decisions have so definitely established the general principle as to leave no room for further discussion. *Riggins v. United States*, 199 U. S. 547.

The right to raise in such a way as this the points argued in the case at bar is determined adversely to the appellant in *In re Chapman*, 156 U. S. 211, unless it be held that section 1014, R. S., gives to a defendant in removal proceedings privileges far beyond what are necessary to protect him. In the *Chapman* case the identical questions pressed in the case at bar were sought to be raised in a petition to this court for a *habeas corpus* and the court denied leave, saying (pp. 217, 218):

In the case before us, the question as to the jurisdiction of the Supreme Court of the District of Columbia has indeed already been passed upon by that court and also by the Court of Appeals, upon a demurrer to the indictment, but the case has not gone to final judgment in either court, and what the result of a trial may be cannot be assumed. We are impressed with the conviction that the orderly administration of justice will be better subserved by our declining to exercise appellate jurisdiction in the mode desired until the conclusion of the proceedings. If judgment goes against petitioner and is affirmed by the Court

of Appeals and a writ of error lies, that is the proper and better remedy for any cause of complaint he may have. If, on the other hand, a writ of error does not lie to this court, and the Supreme Court of the District was absolutely without jurisdiction, the petitioner may then seek his remedy through application for a writ of *habeas corpus*. We discover no exceptional circumstances which demand our interposition in advance of adjudication by the courts of the District upon the merits of the case before them.

This case was affirmed in *Riggins v. United States*, 199 U. S. 547, 551, where it is said:

True, the present case is not one of the issue of the writ of *habeas corpus* in respect of confinement under state authority, nor of an application to this court for the writ, but is the case of custody taken under a *capias* issued on an indictment returned in the District Court and removed to the Circuit Court, and an application to that court for the writ before defendant had been compelled to take any step in the cause.

Defendant might have raised his objections to the indictment by motion to quash or otherwise. If the indictment were held good, as we are advised by the opinion of the Circuit Court it would have been, defendant would have pleaded and gone to trial, and might have been acquitted. If convicted, the remedy by writ of error was open to him.

There is nothing in this record to disclose that there were any special circumstances which justified a departure from the regular

course of judicial procedure. That departure is contrary to the views we have heretofore explicitly expressed, and if we acquiesce in this method of invoking our jurisdiction, we shall find ourselves obliged to decide questions in advance of final adjudication, contrary to the settled rule, and to many decisions we have heretofore announced upon the subject.

If we should affirm or reverse the final order in this case, we should recognize a proceeding below, which we would not ourselves have entertained; and we are not disposed to hold that this manner of testing such questions as are argued here ought to have been pursued.

When a defendant has been permitted a hearing before the commissioner as to his identity, his commission of the acts in the place charged, and the existence of a *prima facie* case of an offense against a law of the United States, he has had all the advantages to which his absence from the district where the offense was committed entitle him. On other points he should be placed on an equality with the defendant as to whom removal proceedings are not necessary, and as to the latter it is settled, by the decisions last referred to, that none of the defenses raised in the case at bar is open on *habeas corpus*.

## II.

**Section 102, R. S., covers an investigation of the character undertaken in the case at bar.**

The language of the act is "any matter under inquiry before either House, or any committee of either House of Congress." This plainly covers an

inquiry undertaken for the purpose of obtaining information to aid in the exercise of legislative powers, and it is so held in *In re Chapman*, 166 U. S. 661.

(a) Counsel for appellant go at great length into the circumstances under which the act of 1857 was passed, for the purpose of showing that it was enacted under pressure induced by charges of bribery of Members of Congress, and should be confined to that particular class of cases. Perhaps it might have been so confined, but as Congress chose to use general language, the inference is exactly contrary to that attempted to be drawn by counsel, and the citations from the debates on the act (*e. g.*, Apps. Brief, p. 44) show that leading Members of Congress understood the broad scope of the act, and relied on the provision for review by the courts to restrain inquiry within its proper bounds.

Long extracts are made from these debates. It is admitted that they are not relevant, but it is said they show the "environment." But the act of 1857 was divided, changed, and deliberately reenacted in the Revision. It is a far cry from the "environment" of 1857 to that of 1873.

(b) It is said (Brief, p. 31), that "this act does not provide for any judicial review of the pertinency or relevancy of questions before the witness becomes liable to punishment for refusing to answer," and the procedure is contrasted with that given by law to the Interstate Commerce Commission, and sustained in *Interstate Commerce Commission v. Brimson*, 154

U. S. 447. It is not easy to understand this argument. Under section 102, Revised Statutes, there must be an indictment, and a trial by jury according to rules of law laid down by the court before punishment ensues. In the other proceeding there is merely a summary hearing on petition before a judge without a jury, either grand or petit, followed by an imprisonment for contempt of court.

(c) Great names are seriously relied on (Brief, pp. 27-29) to show that this is a representative government, and such a government is pictured as one where the representative obtains his information by casual conversation with his constituents, using merely persuasion. Congress, we are told, could have had only this in mind when it passed section 102, R. S. Possibly this is one way to appraise legislative functions, and, taken in connection with the statement on page 89 of the brief, that the rumor of the existence of an evil is sufficient for Congress to enact legislation against it, it presents a comprehensive system for legislative action. Yet Congress may possibly have contemplated more exact procedure, and may have preferred to obtain the sworn testimony of persons familiar with the matter under inquiry which could be made a record and upon which a report could be based. Such a procedure is not without the terms of section 102, R. S., and this court could hardly deny to Congress the discretion to adopt a method analogous to that employed in judicial proceedings, nor construe section 102, R. S., so as to exclude it.

## III.

**Sections 102 et seq., R. S., are constitutional.**

This is decided by *Kilbourn v. Thompson*, 103 U. S. 168, read in connection with *In re Chapman*, 166 U. S. 661. In the *Kilbourn* case (p. 199) the statement of law made by the Supreme Court of Massachusetts in *Burnham v. Morrissey*, 14 Gray, 226, where the right to compel witnesses to answer questions on inquiry in aid of legislation was upheld, is fully concurred in, and a different conclusion reached only because in the *Kilbourn* case the inquiry could result in no valid legislation on the subject to which it referred (103 U. S. 195). In the *Chapman* case questions similar to those put to appellant were held proper because they were not inquiries into the private affairs of the witness and were put in the course of an inquiry within the jurisdiction of the Senate. The argument that the *Chapman* case as a precedent must be confined to the punishment of Members of Congress and analogous matters is without force. It is true each House is made judge of the elections and qualifications of its Members, and may punish or expel them, but they are also given the power of legislation. In neither case is any express power conferred to summon witnesses in aid of execution of the power expressly granted or to punish them for failure to testify. It is as easy to imply it in the one case as in the other. The power is a necessary incident of the power to legislate, and has always been so considered. It gives the legislature eyes and

ears. In *Briggs v. Mackellar*, 2 Abb. Pr. (N. Y.) 30, 58, Judge Daly used the following language:

\* \* \* The right to examine witnesses, as a part of the ordinary and usual legislative machinery, would seem to follow as incident to the right to legislate, which has been conferred upon them; for it would be inconsistent to hold that they may, under the charters, exercise the power, and yet may not do what is essential to enable them to exercise it properly.

In *Wickelhausen v. Willett*, 10 Abb. Pr. (N. Y.), 164, 173, Judge Hoffman discussed the matter most elaborately in reference to the power of Congress, and said:

Now, the power of investigation through a committee is essential to wise legislation. The power to call for information from others, flows from this necessity. Hence the old formula of authority to send for persons and papers. But to rob the process of such a committee of all compulsory effect, to reduce it to a request, to deny all means of enforcement and all power to punish for disobedience, would be to render inquiry often fruitless, to exclude sources of information, and to impair or defeat the objects of legislation.

This case was affirmed in *Wilckens v. Willet*, 1 Keyes (N. Y.) 521, 531.

In *People, ex rel. McDonald, v. Keeler*, 99 N. Y. 463, 482, the Court of Appeals said:

It is difficult to conceive any constitutional objection which can be raised to the provision

authorizing legislative committees to take testimony and to summon witnesses. In many cases it may be indispensable to intelligent and effectual legislation to ascertain the facts which are claimed to give rise to the necessity for such legislation, and the remedy required, and, irrespective of the question whether in the absence of a statute to that effect either house would have the power to imprison a recusant witness, I cannot yield to the claim that a statute authorizing it to enforce its process in that manner is in excess of the legislative power.

In *Burnham v. Morrissey*, 14 Gray, 226, 239 the Supreme Court of Massachusetts said:

The house of representatives has many duties to perform, which necessarily require it to receive evidence, and examine witnesses. It is the grand inquest for the Commonwealth, and as such has power to inquire into the official conduct of all officers of the Commonwealth, in order to impeachment. It may inquire into the doings of corporations, which are subject to the control of the legislature, with a view to modify or repeal their charters. It is the judge of the election and qualification of its members. It has power to decide upon the expulsion of its members. It has often occasion to acquire a certain knowledge of facts, in order to the proper performance of legislative duties.

We therefore think it clear that it has the constitutional right to take evidence, to sum-

mon witnesses, and to compel them to attend and to testify. This power to summon and examine witnesses it may exercise by means of committees.

The cases cited from the Privy Council of England, namely, *Kielley v. Carson*, 4 Moore P. C. 63, *Fenton v. Hampton*, 11 *ib.* 347, and *Doyle v. Falconer*, L. R. 1 P. C. 328, merely hold that a derivative assembly of an English colony has no power to punish for contempt by summary process of its own. They have no bearing on the power of Congress to pass an act providing for judicial proceedings on indictment in the case of recalcitrant witnesses, where the power of Congress to make the inquiry and put the particular questions is left to judicial decision and the penalty is fixed by law.

The gist of the argument of appellant on this point is stated as follows on page 51 of the brief:

\* \* \* The statute, then, applying only to the people at large, that is, private citizens who hold no office under the government, the inquiry is whether the people who have *delegated* the legislative power to Congress, and imposed upon that body the duty of making laws, can be compelled, under pain of fine and imprisonment to assist Congress in the discharge of those duties. We submit that Congress can no more demand this service from the people than the executive or judicial departments of the Government can call for a similar sacrifice to enable them to perform *their* respective functions.

This may be answered by the following paraphrase:

The inquiry is whether the people who have *delegated* the judicial power to the Federal courts and imposed upon those courts the duty of construing the laws, can be compelled, under pain of fine and imprisonment to assist *the courts* in the discharge of those duties. We submit that the *courts* can no more demand this service from the people than the executive and legislative departments of the Government can call for a similar sacrifice to enable them to perform their respective functions.

Unless a power to compel testimony can not be implied from the power to make laws, but must be implied from the power to construe them, the paraphrase is as good an argument as the original.

Much is said in the brief *passim* as to the rights and privileges of the individual. No more important consideration could be urged, but if the power of investigation and the power to compel testimony in aid thereof exist in Congress—as they clearly do—the mere fact that such investigation may touch the private affairs of a citizen is no objection to its constitutionality. Under section 102 *et seq.*, R. S., the appellant is secured a judicial hearing on the legality of the investigation and the pertinency of the questions. To hold that in addition he is entitled to refuse disclosure of private matters would be to hamper unduly and beyond necessity the power of investigation. Such an objection could be made as reasonably in a proceeding to investigate alleged bribery of Members of Congress—in which case the

appellant apparently admits it would not be good—as in the case of an investigation in aid of legislation.

The questions asked the appellant are the same in character as those asked Chapman (166 U. S. 663). They do not involve *appellant's* private affairs, but those of third persons, an inquiry always permitted. *Grant v. United States*, 227 U. S. 74, and cases cited.

There was no unreasonable search or seizure, nor any requirement of self-incrimination. Outside of these two constitutional guaranties there is nothing in a constitutional sense which makes a broker's dealings with his client immune from investigation

#### IV.

##### The questions were pertinent to the inquiry.

Upon this point the nature of the inquiry authorizing the investigation must be examined, as well as the questions themselves. There can hardly be any doubt that the broad scope of the resolution—too broad it is claimed by appellant—justified the questions if fairly put. In considering the propriety of the resolutions, it should not be insisted that they must fall within any single, specific, designated, power of Congress.

(a) All the powers given to Congress by the Constitution over trade and commerce must be considered as a whole. The different individual powers must be looked at as interacting on and aiding the others. The taxing power, the power to borrow money, to regulate interstate and foreign commerce

to coin money, to establish post offices and post roads, while separated in the Constitution, necessarily in action overlap and constitute in reality a whole.

The case at bar is a good example. Two residents of California, owning the major portion of the stock in two corporations of that State, combine with brokers in New York to organize a holding company under the laws of Virginia. A large part of the stock, common and preferred, of the holding company is transferred to the brokers, who organize two syndicates—one in London and one in this country. The latter is composed of individuals and "banking institutions" doing business in New York and other States. Several of its members are officers of national banks. This syndicate being closed out at a profit before it was even fully organized (R. 50), the original bankers inaugurate a campaign on the New York Stock Exchange, a voluntary association doing business in New York City, and by means of fictitious transactions sell to the public at from 50 to 70 (R. 58) stock which cost nothing (R. 33, 34), and which they themselves held at 45 (R. 58). These sales it may fairly be assumed affected commerce from California to Virginia, and of course involved the use of the mails. Such transactions in the past have produced panics and have seriously deranged the currency and put a great strain on the whole machinery of credit. They have tempted officers of national banks to an improper and at times a criminal use of the resources of their institutions. Their influ-

ence upon interstate trade and commerce can not be calculated. In investigations of such complicated, far-reaching transactions, every fair discretion should be allowed Congress in the scope of its inquiry and in the character of the questions asked.

(b) Congress in passing laws is as much bound to observe the Constitution as the courts in construing them. Since the question whether a law is constitutional or not must, in many cases, depend upon the actual facts to which it is intended to apply, Congress may investigate to determine such facts, though it may turn out on such inquiry that the case falls outside the constitutional power of Congress. For example, whether the operations of the California Petroleum Company are such as to constitute interstate commerce might not be determinable until after an investigation into its method of business; and the same is true of the New York Stock Exchange.

(c) Congress has power to propose amendments to the Constitution, and to exercise this power judiciously might require an investigation into matters confessedly, at present, outside its constitutional powers. For example, before proposing an amendment authorizing woman's suffrage, Congress might investigate the working of such suffrage in the States where it is permitted, though confessedly such subject can not be legislated on by Congress at present.

Tested by the above considerations, there is nothing in the greater part at any rate of the resolution which can be said to be outside the proper authority of Congress in investigating in aid of legislation.

The main objection urged to the pertinency of the questions in the case at bar is that the committee had learned all it needed when it was informed that there was a fourth partner in the original combination, and that there were national bank officers interested in the subsyndicate. But surely whether to stop here or go further was a matter within the discretion of the committee. As said by Judge Cole in *In re Falvey*, 7 Wis. 630, 642:

The very tranquillity and existence of the State might require that the utmost latitude as to form and subject matter of the questions proposed be allowed, in order to expose and bring to light some widespread conspiracy to overthrow the government or some combination to paralyze its powers by corrupting the high public officers under the government.

It is clear that in the *Chapman* case, if Chapman had admitted that Senators had dealt with him in sugar stocks, he would not have been excused from giving their names. Even in a court of law, bound by strict rules of evidence, such a limit would not be imposed to cross-examination. The proper test is whether the questions have some reasonable relevancy to the inquiry and whether they are fair; that is, not unduly prying and inquisitorial. Judged by these tests, the questions—which confessedly did not touch the witness's private affairs but those of others—were not improper. Not to rest satisfied with a statement that there were "banking institu-

tions" and national bank officers interested, but to desire knowledge who they were, where they did business, and to what extent, and how largely influential in interstate commerce and currency, is not inquisition. Indeed, if the demand for the names of the undisclosed parties had been due simply to a desire to call them as additional witnesses, would not the committee have been well within the bounds of its discretion?

The argument that an answer could only lead to an investigation of national banks, and that such an investigation would be forbidden by the prohibition against exercising visitorial powers contained in section 5241, R. S., is unsubstantial to a degree. It can neither be assumed that the answers would lead to any such investigation nor, if they did, that such investigation would be visitorial within the meaning of section 5241, R. S.

#### CONCLUSION.

The judgment below should be affirmed.

JOHN W. DAVIS,  
*Solicitor General.*

W. C. HERRON,  
*Attorney.* X

FEBRUARY, 1914.

This rule applies equally whether the petitioner is committed for trial within the district or held under warrant of removal to another State. *Ex parte Royall*, 117 U. S. 241.

A citizen cannot be held for custody or removed for trial where there is no provision of common law or statute making an offense of the acts charged, as in such case the committing court would have no jurisdiction as the prisoner would be in custody without warrant of law. Every act of Congress is presumptively valid and a committing magistrate cannot properly treat as invalid a statutory declaration of what should constitute an offense except where the act is palpably void. Whether Congress has power to compel a witness in a congressional inquiry to make material and non-criminatory disclosures, and whether the district judge has jurisdiction to commit on the ground that the statute punishing the witness for refusal to disclose is unconstitutional, are questions for the determination of the trial court and not on a proceeding in *habeas corpus*.

207 Fed. Rep. 805, affirmed.

THE facts, which involve the jurisdiction of courts on *habeas corpus* proceedings and to what extent the court will pass upon questions of jurisdiction and the merits of the case before the trial, are stated in the opinion.

Mr. John C. Spooner, with whom Mr. Paul D. Cravat, Mr. John D. Lindsay and Mr. Stuart McNamara were counsel, filed the brief, for appellant:

The petitioner was not a wilfully recalcitrant witness.

Even though the language of the statute were susceptible of a construction broad enough to cover the case at bar, it should not be so construed because such a construction was not within the intention of Congress.

Such a construction would be repugnant to the representative character of the American government.

That there was an intention on the part of Congress that the act should not apply to inquiries in aid of legislation is implied in the title.

This is made plain by a consideration of the act as a whole. It contains no provision for the judicial deter-

235 U. S.

Argument for Appellant.

mination of the pertinency or relevancy of questions, which is usual in statutes authorizing inquiries in aid of legislation, before proceeding to imprison the witness for his refusal to answer. The first section refers only to those matters in respect of which Congress may competently take definitive action; the presence of the word "pertinent" is inconsistent with any other view; the second or immunity clause demonstrates the purpose of so limiting the operation of the act. This intent is confirmed by the language of the third section.

For the situation as it existed at the time the act was passed and as it was pressed upon the attention of Congress, see the *Simonton Case* and report of the select committee and introduction of the bill.

The history of the period is shown by the debates, Cong. Globe, 34th Cong., 3d Sess., pp. 275 *et seq.*

This is the first occasion on which an attempt has been made to have the statute construed as applying to inquiries in aid of legislation. See *Cases of Wolcott* in 1858; of *Kilbourn* in 1876; of *Chapman* in 1894.

If the statute is to be so construed as to make it applicable to inquiries in aid of legislation it is unconstitutional.

Any forcible intrusion into and compulsory exposure of the private affairs of the individual except when the general good requires it, is violative of the Fourth and Fifth Amendments.

The power to invade the right of privacy can be justified only on the ground of necessity; such a power is not necessary for the exercise by Congress of its function of legislation. This question was raised but not decided in *Kilbourn v. Thompson*, 103 U. S. 168. It was expressly decided in the negative by the Privy Council in *Kielley v. Carson*, 4 Moore, P. C. 63, a decision which this court has treated with high respect.

The decisions holding that state legislatures possess

ies  
ga-  
  
es,  
not  
of  
on  
he  
88  
re-  
he  
ny  
ur-  
le-  
ese

HENRY *v.* HENKEL, UNITED STATES MARSHAL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES  
FOR THE SOUTHERN DISTRICT OF NEW YORK.

No. 216. Argued February 24, 25, 1914.—Decided November 30, 1914.

No hard and fast rule has as yet been announced as to how far the court will go in passing upon questions raised in *habeas corpus* proceedings. Barring exceptional cases, the general rule is that on applications for *habeas corpus*, the hearing is confined to the single question of jurisdiction, and even that will not be decided in every case.

The hearing on *habeas corpus* is not in the nature of a writ of error, nor is it intended as a substitute for the functions of the trial court.

the power are not conclusive here as Congress has not always thought it had the power; nor is the practice of recent years evidence of the constitutionality of the practice.

The questions which the appellant refused to answer were not pertinent to the question under inquiry nor was the information which they sought to elicit necessary or material.

If the committee had known the names of the national bank officers which the appellant refused to disclose, they would not have been able to examine, through such officers, or otherwise, into the transactions or affairs of the banks themselves.

In support of these contentions, see *Matter of Barnes*, 204 N. Y. 108; *Boyd v. United States*, 116 U. S. 616; *Briggs v. Mackellar*, 2 Abb. Pr. (N. Y.) 30; *Burnham v. Morrissey*, 14 Gray, 226; *Chapman Case*, Smith's Digest, 583; *In re Chapman*, 166 U. S. 661; *Cooper's Case*, 32 Vermont, 253; *Matter of Davies*, 168 N. Y. 89; *Doyle v. Falconer*, L. R., 1 P. C. 328; *In re Falvey*, 7 Wisconsin, 630; *Fenton v. Hampton*, 11 Moore, P. C. 347; *Guthrie v. Harkness*, 199 U. S. 148; *Harriman v. Int. Com. Comm.*, 211 U. S. 407; *Heike v. United States*, 227 U. S. 131; *Int. Com. Comm. v. Brimson*, 154 U. S. 447; *Kielley v. Carson*, 4 Moore, P. C. 63; *Kilbourn Case*, Smith's Digest, 536; *Kilbourn v. Thompson*, 103 U. S. 168; *Loan Association v. Topeka*, 20 Wall. 655; *McLean v. United States*, 226 U. S. 374; *Muskrat v. United States*, 219 U. S. 346; *Nor. Pac. Ry. Co. v. Washington*, 222 U. S. 370; *Oceanic Nav. Co. v. Stranahan*, 214 U. S. 320; *Omaha Street Ry. v. Int. Com. Comm.*, 230 U. S. 324; *In re Pacific Ry. Comm.*, 32 Fed. Rep. 241; *McDonald v. Keeler*, 99 N. Y. 463; *Ex parte Robinson*, 19 Wall. 505; *Robinson v. Phil. & R. R. Co.*, 28 Fed. Rep. 340; *Simonton Case*, Smith's Digest, 85; *Slaughter House Cases*, 16 Wall. 36; *Standard Oil Co. v. United States*, 221 U. S. 1; *Stockdale v. Hansard*, 9 Ad. & E. 1; *United States v. Press Publishing*

235 U. S.

Argument for United States.

*Co.*, 219 U. S. 1; *United States v. Trans-Missouri Assn.*, 166 U. S. 290; *Wertheim v. Continental R. & T. Co.*, 15 Fed. Rep. 716; *Wolcott Case*, *Smith's Digest*, 201.

*The Solicitor General*, with whom *Mr. W. C. Herron* was on the brief, for the United States:

The points attempted to be made by appellant are not open in this proceeding. *Beavers v. Henkel*, 194 U. S. 73; *Benson v. Henkel*, 198 U. S. 1; *Glasgow v. Moyer*, 225 U. S. 420; *Greene v. Henkel*, 183 U. S. 249; *Hyde v. Shine*, 199 U. S. 62; *In re Chapman*, 156 U. S. 211; *Johnson v. Hoy*, 227 U. S. 245; *Riggins v. United States*, 199 U. S. 547; *Tinsley v. Treat*, 205 U. S. 20.

Revised Statutes, § 102, covers an investigation of the character undertaken in the case at bar. *In re Chapman*, 166 U. S. 661.

Revised Statutes, §§ 102 *et seq.*, are constitutional. *In re Chapman*, 166 U. S. 661; *Kilbourn v. Thompson*, 103 U. S. 168.

For state court decisions upholding the power of a legislative body to summon witnesses and to compel them to answer questions on inquiry in aid of legislation, see *Briggs v. Mackellar*, 2 Abb. Pr. (N. Y.) 30; *Burnham v. Morrissey*, 14 Gray, 226; *McDonald v. Keeler*, 99 N. Y. 463; *Wickelhausen v. Willett*, 10 Abb. Pr. (N. Y.) 164 (*aff'd Wilckens v. Willet*, 1 Keyes, 521).

The questions were pertinent to the inquiry.

In support of these contentions, see *Beavers v. Henkel*, 194 U. S. 73; *Benson v. Henkel*, 198 U. S. 1; *Briggs v. Mackellar*, 2 Abb. Pr. (N. Y.) 30; *Burnham v. Morrissey*, 14 Gray, 226; *Doyle v. Falconer*, L. R. 1 P. C. 328; *Fenton v. Hampton*, 11 Moore, P. C. 347; *Glasgow v. Moyer*, 225 U. S. 420; *Grant v. United States*, 227 U. S. 74; *Greene v. Henkel*, 183 U. S. 249; *Hyde v. Shine*, 199 U. S. 62; *Hyde v. United States*, 225 U. S. 347; *In re Chapman*, 156 U. S. 211; *In re Chapman*, 166 U. S. 661; *In re Falvey*, 7 Wisconsin,

630; *Int. Com. Comm. v. Brimson*, 154 U. S. 447; *Johnson v. Hoy*, 227 U. S. 245; *Kielley v. Carson*, 4 Moore, P. C. 63; *Kilbourn v. Thompson*, 103 U. S. 168; *McDonald v. Keeler*, 99 N. Y. 463; *Riggins v. United States*, 199 U. S. 547; *Tinsley v. Treat*, 205 U. S. 20; *Wickelhausen v. Willett*, 10 Abb. Pr. (N. Y.) 164 (aff'd in *Wilckens v. Willet*, 1 Keyes, 521).

MR. JUSTICE LAMAR delivered the opinion of the court.

In the 62nd Congress, the House of Representatives (H. R. 429, 504) adopted a resolution authorizing the members of the Committee on Banking and Currency to investigate and make a report as to the financial affairs and activities of National Banks, interstate corporations and groups of financiers as a basis for remedial and other legislative purposes. To that end the Committee was authorized to send for persons and papers and to swear witnesses.

Among those summoned and sworn was the appellant, George G. Henry, who was examined at length as to many matters relating to the formation of syndicates and the flotation of stock. He testified that he was a member of the firm of Salamon & Co., bankers in New York, who were accustomed to form syndicates for the acquisition and sale of blocks of stock and to grant participation therein to trust companies and national banks—their directors and corporate officers also being frequently members of the same syndicate. In reference to one of these transactions he testified that Salamon & Co. had agreed to pay \$8,215,262 for \$22,500,000 preferred and common stock in a California oil company; thereupon Salamon & Co., Lewisohn Bros., Hallgarten & Co., bankers in New York, together with a fourth banking firm (whose name witness did not disclose) had then formed a syndicate for acquiring and disposing of this

235 U. S.

Opinion of the Court.

\$22,500,000 of oil stock. He testified how the shares were allotted, and that  $12\frac{1}{2}$  per cent. went to the unnamed persons in the banking group; that in the subsequent disposition of the stock a number of shares were acquired by 15 individuals, some of whom were officers of National Banks located in New York, Chicago and Detroit. Other shares were allotted to those who were officers in Trust Companies in New York and Chicago. Letters were written offering to allot part of this oil stock to the New York syndicate, but before acceptance of the allotment all of the stock had been sold at a profit of nearly \$500,000, a part of which went to the members of the New York syndicate (officers of banks), even though they had not previously accepted the allotment. They thus, in effect, received a present of their share of the profits. He was asked to give the names of those composing the New York syndicate, but claimed to have the right under the Constitution to decline to answer the question, saying also that he "did not want to disclose the names of the participants in the New York syndicate, although he understood it to be the wish of the subcommittee that he should, for the reason that he would consider it dishonorable to reveal the names of his customers unless compelled to do so."

The Committee ordered the fact of his refusal to answer to be reported to the House for action—majority and minority reports being made. After discussion, the House of Representatives directed that the facts should be laid before the Grand Jury of the District of Columbia. That body returned an indictment against Henry charging him with refusing to answer questions propounded by the Committee. Rev. Stat., §§ 101-104. A warrant issued and Henry was arrested in New York and when taken before the Commissioner demanded an examination.

On the hearing and before the introduction of any testimony, he moved for his discharge on the ground that

the Commissioner was without jurisdiction, since it appeared on the face of the complaint that petitioner was not charged with any offense against the United States.

The motion was denied and, it having been admitted that Henry was the person described in the indictment, the Government introduced the bench warrant and a certified copy of the indictment as sufficient proof of probable cause.

The petitioner then offered in evidence the Resolution defining the scope of the inquiry, with a transcript of his testimony before the Committee—including the question which he refused to answer and his reasons therefor. Copies of the majority and minority Reports to the House were also incorporated in the record. After argument the Commissioner ordered Henry to be held in custody until the District Judge could issue a warrant for his removal to the District of Columbia under the provisions of Section 1014, Revised Statutes.

Thereupon Henry applied to the District Judge for a writ of *habeas corpus*, and on the hearing introduced all of the testimony that had been submitted to the Commissioner, and asked for his discharge on grounds similar to those which had been presented to the committing magistrate.

After argument the District Judge discharged the writ, and an appeal was entered to this court where petitioner's counsel, renewing the objections made in the District Court, insist that the Resolution did not authorize an inquiry as to the matter about which Henry refused to testify; that the facts charged do not constitute an offense under the statute; or, if so, that the statute is void. On the authority of *In re Chapman*, 166 U. S. 661, 668; *Kilbourn v. Thompson*, 103 U. S. 168, and other cases, they insist that in the trial of contested elections, in cases involving the expulsion of members, or other quasi-judicial proceedings, the House or Senate may, like any other

235 U. S.

Opinion of the Court.

court, compel material and non-criminatory disclosures. But they argue that, in view of the provisions of the Fourth Amendment to the Constitution, neither House can compel a citizen to disclose his private affairs as a basis for legislation—particularly where, as in the present case, the witness was not contumacious, but had fully and freely answered all material questions; had disclosed the fact that National Banks and their officers were often members of the same syndicate, and had only refused to give the names of certain bank officials when the names themselves could not by any possibility be of assistance in shaping legislation. They, therefore, contend that the papers show on their face that there was no jurisdiction to issue the warrant on which he was held and that Henry should not be subjected to the hardship of being removed to the District of Columbia to stand trial upon an indictment which affirmatively shows that no crime has been committed.

The Government, on the other hand, insists that Rev. Stat., § 104, is constitutional and that Congress may provide for the punishment of witnesses who, in answer to a question propounded by its authority, fail to make non-criminatory disclosures and furnish information deemed necessary as a basis for legislation.

These important and far-reaching questions, though elaborately argued, should not be decided on this record, in view of the rule, relied on by the Government, that such issues must primarily be determined by the trial court.

The petitioner, however, relying specially on *Greene v. Henkel*, 183 U. S. 249, 261; *Beavers v. Henkel*, 194 U. S. 73; *Tinsley v. Treat*, 205 U. S. 20, claims that as this is a removal case, with the special hardships attendant thereon, it is to be distinguished from those in which the foregoing rule has been announced.

When a person under arrest applies for discharge on

writ of *habeas corpus* the issue presented is whether he is unlawfully restrained of his liberty. Rev. Stat., § 770. But there is no unlawful restraint where he is held under a valid order of commitment, so that in strict logic the inquiry might extend to the legal sufficiency of the order. In view, however, of the nature of the writ and of the character of the detention under a warrant, no hard and fast rule has been announced as to how far the court will go in passing upon questions raised in *habeas corpus* proceedings. In cases which involve a conflict of jurisdiction between state and Federal authorities, or where treaty rights and obligations of the United States are involved, and in that class of cases pointed out in *Ex parte Royall*, 117 U. S. 241; *Ex parte Lange*, 18 Wall. 163; *New York v. Eno*, 155 U. S. 89; *In re Loney*, 134 U. S. 378, the court hearing the application will carefully inquire into any matter involving the legality of the detention and remand or discharge as the facts may require. By barring such exceptional cases, the general rule is that, in such applications, the hearing should be confined to the single question of jurisdiction, and even that will not be decided in every case in which it is raised. For otherwise the "*habeas corpus* courts could thereby draw to themselves, in the first instance, the control of all prosecutions in state and Federal courts." To establish a general rule that the courts on *habeas corpus*, and in advance of trial, should determine every jurisdictional question would interfere with the administration of the criminal law and afford a means by which, with the existing right of appeal, delay could be secured when the Constitution contemplates that there shall be a speedy trial, both in the interest of the public, and as a right to the defendant.

The question has been before this court in many cases, some on original application and others on writ of error in proceedings which began after arrest and before commitment; after commitment and before conviction; after

conviction and before review. The applications were based on the ground of the insufficiency of the charge, the insufficiency of the evidence, or the unconstitutionality of the statute, state or Federal, on which the charge was based. In some of the cases the applicants have advanced the same arguments that are here pressed, including that of the hardship of being taken to a distant State for trial upon an indictment alleged to be void.

But in all these instances, and notwithstanding the variety of forms in which the question has been presented, the court, with the exceptions named, has uniformly held that the hearing on *habeas corpus* is not in the nature of a writ of error nor is it intended as a substitute for the functions of the trial court. Manifestly, this is true as to disputed questions of fact, and it is equally so as to disputed matters of law, whether they relate to the sufficiency of the indictment or the validity of the statute on which the charge is based. These and all other controverted matters of law and fact are for the determination of the trial court. If the objections are sustained or if the defendant is acquitted he will be discharged. If they are overruled and he is convicted he has his right of review. *Kaizo v. Henry*, 211 U. S. 146, 148. The rule is the same whether he is committed for trial in a court within the district or held under a warrant of removal to another State. He cannot, in either case, anticipate the regular course of proceeding by alleging a want of jurisdiction and demanding a ruling thereon in *habeas corpus* proceedings. *Glasgow v. Moyer*, 225 U. S. 420; *In re Gregory*, 219 U. S. 210; *Ex parte Simon*, 208 U. S. 144; *Johnson v. Hoy*, 227 U. S. 245; *Urquhart v. Brown*, 205 U. S. 179; *Hyde v. Shine*, 199 U. S. 62; *Beavers v. Henkel*, 194 U. S. 73; *Riggins v. United States*, 199 U. S. 547, 551; *Ex parte Royall*, 117 U. S. 241.

The last of these decisions is particularly in point not only because of the applicability of its reasoning to the

present case, but because of the fact that the writ was there denied even though the statute, on which the charge was based, was ultimately held to be void. *Royall v. Virginia*, 116 U. S. 572, 579, 583; *Same v. Same*, 121 U. S. 102, 104; *In re Royall*, 125 U. S. 696.

The cases cited do not, of course, lead to the conclusion that a citizen can be held in custody or removed for trial where there was no provision of the common law or statute making an offense of the acts charged. In such case the committing court would have no jurisdiction, the prisoner would be in custody without warrant of law and therefore entitled to his discharge. *Greene v. Henkel*, 183 U. S. 249, 261. But the presumption is in favor of the validity of every act of Congress and it would not be proper for the committing magistrate to treat as invalid a statutory declaration of what should constitute an offense, except in those rare and extreme cases in which the act was plainly and palpably void.

Neither the issue nor the basis of the decision is changed when the person held under the warrant applies to a District Judge for discharge on writ of *habeas corpus*. So likewise the same issue and the same rule of decision must govern when the case is here on appeal from the order of the *habeas corpus* tribunal. It follows therefore that this court should not on this record pass on the jurisdictional questions presented. They like all other controverted issues in the case are for the determination of the courts of the District of Columbia when the defendant is therein put to his trial.

*Judgment affirmed.*

MR. JUSTICE McREYNOLDS took no part in the consideration or decision of this case.